

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

- - - - -

Tamara K. Alsaada,	:	
et al.,	:	
Plaintiffs,	:	
vs.	:	Case No. 2:20-cv-3431
	:	Judge Marbley
	:	Magistrate Judge Jolson
City of Columbus,	:	
Ohio, et al.,	:	
Defendants.	:	

- - - - -

DEPOSITION OF SMITH WEIR  
VIA VIDEOCONFERENCE

- - - - -

Taken at Columbus Division of Police  
120 Marconi Boulevard  
Columbus, Ohio 43215  
February 16, 2021, 10:02 a.m.

- - - - -

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## I N D E X

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(PDF exhibits have been provided to counsel with the transcript. No hard copies were in the possession of the court reporter.)	

Tuesday Morning Session  
 February 16, 2021, 10:02 a.m.

## S T I P U L A T I O N S

It is stipulated by counsel in attendance that the deposition of Smith Weir, a witness herein, called by the Plaintiffs for cross-examination, may be taken at this time by the notary pursuant to notice and subsequent agreement of counsel that said deposition may be reduced to writing in stenotypy by the notary, whose notes may thereafter be transcribed out of the presence of the witness; that proof of the official character and qualification of the notary is waived. - - -

THE REPORTER: Would counsel please identify themselves for the record, state who they represent, identify who else is in the room with them, and express their stipulation that this deposition may take place with a remote administration of the oath and remote reporting of the deposition.

MR. GITTES: Yes. My name is Fred Gittes on behalf of the plaintiffs. There's no one in the room with me. Jeff Vardaro, also counsel in the case, is also participating in the deposition as co-counsel. He -- I will be asking the questions. And we do agree to the remote swearing in of the witness and the remote taking of this deposition.

MS. TANOURY: Alana Tanoury for the defendants. I am alone in my office. Wes Phillips just jumped on as well. And we agree to the remote taking of the deposition.

SMITH WEIR

being first duly sworn, testifies and says as follows:

1 CROSS-EXAMINATION

2 BY MR. GITTES:

3 Q. Okay. Commander, sorry for the  
4 familiarity, but we've been through a lot of  
5 depositions in this case, so we kind of --

6 A. I understand.

7 Q. -- do a little chitchat on the side.

8 I will be asking you most, maybe all  
9 the questions today. And I need you -- to begin  
10 with, would you state your full name for the  
11 record?

12 A. First name is Smith, S-M-I-T-H, last  
13 name is Weir, W-E-I-R.

14 Q. And your current occupation is?

15 A. I'm a police officer with the City of  
16 Columbus. I've been employed by the City of  
17 Columbus Police Department since December of 1999.  
18 My current assignment is I'm -- well, my current  
19 rank is of commander, and I'm currently assigned  
20 as the commander for zone five, patrol operations.

21 Q. And, Commander, have you been in a  
22 deposition before?

23 A. I have.

24 Q. And how many times would you say?

1 you: How long has it been since you did that  
2 deposition?

3 A. I believe that deposition was either in  
4 2011, 2012, somewhere in that time frame.

5 Q. Okay. So it's been quite awhile?

6 A. Yes, sir.

7 Q. And was that case -- were you a party  
8 in the case or just a witness?

9 A. Just a witness per se. I wrote a  
10 report that was -- I wrote a report that the two  
11 parties were talking about, I guess is the best  
12 way to put it.

13 Q. Was it like an accident case or  
14 something like that?

15 A. No. It was about judicial misconduct.

16 Q. Oh, okay. I wish I had more time. I  
17 would love to hear what that was about, but I'll  
18 just skip it.

19 A. Last I heard there was a standing gag  
20 order for the Court, so I'm not sure if I can. I  
21 don't know if it's been lifted or not.

22 Q. Well, that's one way to ruin curiosity.

23 A. Sorry.

24 Q. Okay. So let me go over some of these

1 A. I believe once.

2 Q. Oh, okay. You have testified as an  
3 officer and a supervisor, I would assume, many  
4 times over the years?

5 A. Yes, sir.

6 Q. I think you said you started in '99, so  
7 would it be reasonable to think that you've  
8 testified in hundreds of cases?

9 A. Yes, sir.

10 Q. Okay. I want to go through a bit of --  
11 I should ask: Do you -- when did you become  
12 commander?

13 A. I was promoted to commander in -- well,  
14 the official ceremony was January 24th, I think,  
15 of 2020. I was made acting commander  
16 December 31st of 2020, so technically the  
17 promotion date is December 31st.

18 Q. Okay. We don't -- for purposes of this  
19 deposition, which, by the way, I hope to keep  
20 short, max two hours, so...

21 Let me go through some, I guess they're  
22 my rules for depositions and make sure you're  
23 comfortable with them since you've only been in  
24 one deposition. I should interrupt myself and ask

1 rules that I would like to see if you can agree  
2 to. I will --

3 A. I'm sorry to interrupt, I'm getting a  
4 lot of glare from my window, can I lower my blinds  
5 real quick?

6 Q. Yeah, sure. Absolutely. I have the  
7 same problem here, I just did it.

8 A. Sorry about that.

9 Q. Now you're less ghostly.

10 A. Thank you.

11 Q. I'll be asking you most, probably all  
12 the questions today, so do you understand that as  
13 we go through, if you don't follow one of my  
14 questions for any reason, that you can ask me to  
15 explain it to you --

16 A. Sure.

17 Q. -- or rephrase it? Do you understand  
18 that? Is that --

19 A. I do.

20 Q. And will you -- will you please tell me  
21 if you don't understand something?

22 A. Yes, sir.

23 Q. If I ask you a question and you answer  
24 it, we're all going to assume you understood the

1 question unless you tell us otherwise, okay?  
 2 A. Yes, sir.  
 3 Q. All right. Secondly, I -- we're going  
 4 to be focusing on mostly the spring of 2020, not  
 5 all that long after you became a commander. It's  
 6 not that long ago, but still it's quite awhile  
 7 ago. And I'm sure you've had a lot of things  
 8 going on in your life since then, so if I ask you  
 9 a question and you answer it and you realize later  
 10 that you made a mistake or you forgot something,  
 11 do you understand you can interrupt me at any  
 12 point in the deposition, even if I'm in the middle  
 13 of a question and say, Fred, I just remembered  
 14 something, I made a mistake or I forgot to point  
 15 out something, will you do that for us?  
 16 A. Yes, sir.  
 17 Q. Okay. Also, this is not going to be a  
 18 particularly long depo, but if you need a break,  
 19 please feel free to take it, and I will exercise  
 20 the same privilege myself if that's okay with  
 21 everybody.  
 22 Do you have any questions for me about  
 23 this deposition?  
 24 A. The only question I had was whether if

1 Q. Yeah. Well, no, just generally. But  
 2 not traffic, by the way, I'm not talking about  
 3 traffic.  
 4 A. I had -- when I was a college student,  
 5 I had disorderly conduct by intoxication.  
 6 Q. Oh, okay. Nothing else?  
 7 A. No.  
 8 Q. Okay. You are going to be testifying  
 9 today under oath, so let me make sure that there  
 10 are no obstacles to that. Are you currently on  
 11 any medication or taking any kind of drug that  
 12 would affect your ability to testify accurately  
 13 and truthfully today?  
 14 A. No, sir.  
 15 Q. Do you have any kind of health problems  
 16 that would affect your ability to testify  
 17 accurately and truthfully?  
 18 A. No, sir.  
 19 Q. Do you know of any reason you can't  
 20 testify accurately and truthfully today?  
 21 A. None at all.  
 22 Q. Okay. I'm going to mostly focus --  
 23 well, let me just ask you: During the -- as you  
 24 remember, there were demonstrations regarding

1 you ask a specific question about a policy, if I'm  
 2 allowed to say, hey, can I pull that up on my  
 3 computer and check my notes basically? Or if you  
 4 want me to just go off memory at this point?  
 5 Q. Well, with respect to policies, I'm  
 6 fine for you -- with you looking up, as long as  
 7 you can do it efficiently. I'm more concerned  
 8 about time than you looking it up, okay?  
 9 A. Gotcha, sir.  
 10 Q. Because we promised to get this done in  
 11 a couple of hours, so...  
 12 Any other questions?  
 13 A. No, sir, that's it.  
 14 Q. Let me ask you about your own  
 15 background. Have you ever sued anyone yourself  
 16 before?  
 17 A. No.  
 18 Q. Have you ever been sued?  
 19 A. No.  
 20 Q. Okay. I take it because you're a law  
 21 enforcement officer, I believe I know the answer  
 22 to this question, but I always am cautious, have  
 23 you ever been charged with a crime?  
 24 A. As a law enforcement officer?

1 excessive police force and racism in the spring of  
 2 2020. Do you remember that?  
 3 A. Yes, sir.  
 4 Q. You, at least at some point, played a  
 5 role in handling those demonstrations?  
 6 A. That's correct.  
 7 Q. What was your role?  
 8 A. So on May 27th, 2020, there was an  
 9 incident at Livingston/Lockbourne, which is on  
 10 zone five, it's on the border of 11 and 12  
 11 precinct. And we had an officer respond. There  
 12 was a person that called in and said there was an  
 13 individual standing in the middle of Livingston  
 14 Avenue, he's got a gun on his hip, he's having  
 15 a -- you know, he's got a sign and he's -- you  
 16 know, and he's yelling at passing motorists.  
 17 So our officers showed up, got out of  
 18 the car, basically said, hey, I don't have a  
 19 problem with the sign. The sign by the way said  
 20 eff the police in so many terms. It actually  
 21 spelled it out, though. And the officer said, I  
 22 don't have a problem with the sign, but you can't  
 23 be in the middle of the roadway.  
 24 At one point, the individual pointed

1 his body, the officer said, don't touch your gun,  
 2 and it went downhill from there. It was use of  
 3 force. There was assault on a police officer. I  
 4 was made aware of the incident shortly thereafter.  
 5 It turns out that I knew the subject,  
 6 the citizen who was involved, the arrestee. I've  
 7 known him for about 15 years through my time as an  
 8 officer. And so we watched the video, we  
 9 monitored it. I put out -- you know, we knew that  
 10 just from the reaction of the community that there  
 11 was going to be -- you know, this was not going to  
 12 end, there was going to be an escalation or there  
 13 was going to be more demonstrations because of the  
 14 George Floyd death, and then also the incident  
 15 with Christopher Radden. So I think then on the  
 16 28th we got word that there were going to be  
 17 additional protests, both of which were on zone  
 18 five and, you know, we went from there.  
 19 Q. Okay. I'm a little confused. Did you  
 20 actually go out to the scene when you were called  
 21 at Lockbourne?  
 22 A. No. By the time I found out about it,  
 23 the scene had been contained, so to speak. But  
 24 like I said, I found out about it that night just

1 in terms of the general incident being informed of  
 2 it, and then I watched the video first thing on,  
 3 you know, the next morning when I got to work.  
 4 Q. What's the name of the gentleman who  
 5 was involved?  
 6 A. Christopher Radden.  
 7 Q. I'm sorry?  
 8 A. Christopher Radden.  
 9 Q. Okay. Was -- was he ultimately  
 10 prosecuted?  
 11 A. He was charged. I don't -- I'm not  
 12 sure what the outcome of the case was.  
 13 Q. Okay. So you had no direct involvement  
 14 with him at the scene at all?  
 15 A. No.  
 16 Q. Okay. In fact, it sounds like you  
 17 reviewed the case, but other than that, you didn't  
 18 have a role in it?  
 19 A. No.  
 20 Q. Okay. Was that a demonstration with  
 21 people -- with people involved other than  
 22 Mr. Radden?  
 23 A. There appeared to be about four or five  
 24 other people that were standing on the corner of

1 Livingston and Lockbourne. Christopher was the  
 2 only person that was out in the street, and --  
 3 but, yeah, there were about four or five others  
 4 that were standing on the corner with signs, you  
 5 know, demonstrating.  
 6 Q. Okay. When is the next time you recall  
 7 playing a role as a commander related to the  
 8 spring demonstrations?  
 9 A. So the next day, the 28th, we got word,  
 10 I think that was the Thursday, if I remember  
 11 correctly.  
 12 Q. That's correct.  
 13 A. We got word that there were going to be  
 14 two planned demonstrations. One was at Livingston  
 15 and Lockbourne and one was at our internal affairs  
 16 building at 750 East Long Street. So during the  
 17 course of the day, we -- we scrambled and got  
 18 plans for our bike crews and our community  
 19 response teams to assist with the -- you know, the  
 20 two demonstrations.  
 21 Because of the one at Livingston and  
 22 Lockbourne, we decided to stage at our  
 23 communications, our radio room at 1250 Fairwood,  
 24 so we had the vast majority of our people staged

1 there. We had some people at our internal affairs  
 2 building, but not much. And to be honest, that  
 3 was -- you know, we didn't have attendance  
 4 estimates really for either one that were  
 5 reliable.  
 6 The second -- the demonstration at our  
 7 internal affairs was sponsored by a group called  
 8 Columbus ARA, Anti-Racist Action, which at the  
 9 time I was not familiar with. And the other one  
 10 was -- the one at Livingston and Lockbourne was in  
 11 support of Mr. Radden, who I was familiar with.  
 12 So we had most of our resources at the radio room.  
 13 We tended -- we didn't want to be real  
 14 visible. Our Sergeant Fuqua, who's our PIO and  
 15 also one of our diversity inclusion liaison  
 16 officers, he knew the organizers for the  
 17 Livingston and Lockbourne protest, so he was in  
 18 contact with them. And I was in contact with him  
 19 and we were kind of communicating back and forth  
 20 on that.  
 21 So at a certain point in the late  
 22 afternoon, I was at the radio room on Fairwood in  
 23 the parking lot staged with our squads that we  
 24 had, the bike squads and the CRT teams. And

<p style="text-align: right;">Page 18</p> <p>1 basically I -- there at different points, Sergeant  2 Fuqua would call me. We were watching -- we had  3 the community crime camera at Livingston and  4 Miller, so we could turn the camera and kind of  5 keep -- we were about a block away camera-wise and  6 we could kind of keep an eye on the intersection  7 without actually being there, so we were  8 monitoring through the camera.  9 At different points, Sergeant Fuqua  10 called me and kind of gave me updates on what the  11 protestors were trying to do. I remember  12 specifically at one point Sergeant Fuqua called  13 and said that the protestors wanted to take the  14 street. I was -- I tried to discourage that.  15 Obviously it's rush hour traffic. Even in our  16 post-pandemic state where, you know, it's -- rush  17 hour isn't what it used to be, you know, 5:00,  18 6:00 traffic is still heavier than normal.  19 So one of the things I talked to  20 Sergeant Fuqua about, see if -- I go, if they  21 really are that dead set on trying to go into the  22 street, he said they wanted to show their signs to  23 the motorists and get people to honk or have  24 interaction with the passing motorists, my -- my</p>	<p style="text-align: right;">Page 20</p> <p>1 that point was the Miller-Kelton exit on 70 is  2 pretty close. We are always very concerned about  3 freeway closures with pedestrians and  4 demonstrators. It is very deadly when that  5 happens. There's percentages -- there are studies  6 and percentages that have been shown that, you  7 know, I think it's up to a quarter of the time  8 that, you know, there's a freeway closure that  9 somebody dies. And that's not -- I mean, I think  10 that even counts, you know, more organized  11 closures like construction and stuff like that.  12 So obviously we take it very seriously when, you  13 know, there's the possibility that demonstrators  14 are going to try to take the highway.  15 So because of that, I got a bike squad,  16 and we directed the bike squad to follow them,  17 keep traffic off of them. Not to stop the march,  18 but we wanted to make sure that we had assets in  19 place if they tried to take the freeway, we could  20 stop them. At the same time, we got some cruisers  21 to go up to the actual freeway ramps up at 70 and  22 Kelton and block those off.  23 So they marched, they went east on  24 Livingston and they turned north on Kelton and</p>
<p style="text-align: right;">Page 19</p> <p>1 concession on that was I asked that they only come  2 out into the street during red lights.  3 So if the Livingston -- the east/west  4 traffic light was red, if they could go out into  5 the intersection at that point and then come back  6 to the sidewalk when the light turned green. And  7 the organizers for that seemed amenable to that.  8 I felt that that was the best way to minimize the  9 disruption to the uninvolved traffic, which was  10 one of our concerns.  11 So from watching the video, they seemed  12 to stick to that, for the most part. For the  13 first, you know, hour or so it seemed like they  14 would go out when the light was red, they would be  15 in the intersection for about a minute, the light  16 would turn green, and for the most part, the crowd  17 would find its way back to the sidewalk. And we  18 were pretty pleased with that. I mean, I thought  19 that that was a -- you know, an accommodation that  20 we were able to make, a compromise where, you  21 know, we -- we said we kind of minimized that.  22 At a certain point, I think Sergeant  23 Fuqua called me and said they're going to march,  24 and he didn't know where. The concern for us at</p>	<p style="text-align: right;">Page 21</p> <p>1 then -- and then at the same time that this is  2 going on, we start talking to our group at the  3 internal affairs building. And they say -- I  4 guess, just to provide some context, our internal  5 affairs building is at the corner of Hamilton and  6 Long. There is a fairly sizable surface parking  7 lot that's attached to that building. It's not  8 all dedicated to internal affairs or our accident  9 investigation unit, which is also housed there,  10 there are a couple different businesses in that  11 building, coffee shop, I believe, and a couple  12 other things. But the lot is sizable enough that  13 we felt that the protestors would be able to fit  14 on that lot and we wouldn't have to worry about  15 traffic control and all that.  16 The ARA group, obviously it turned out,  17 did not want to stay on the lot. They started  18 marching. So I got a call from our lieutenant and  19 our sergeant that were at the internal affairs  20 building saying, you know, what do we do?  21 That is also -- that is also very close  22 to the entrance of 71 and 670 right there at  23 Spring and Long, and that was our immediate  24 concern was don't let them get on the highway, you</p>

<p style="text-align: right;">Page 22</p> <p>1 know, it's 6:00, or at this point maybe it was a  2 little bit after, you know, but it's a heavy  3 traffic time, we don't want, you know, marchers  4 going on to the freeway, pedestrians going on the  5 freeway, so block off that.  6 Once they blocked off that, they -- he  7 said they kept going westbound on Long, I guess it  8 would be. We didn't know where they were going  9 and we were guessing headquarters. I think we  10 called our headquarters operations bureau and  11 said, hey, you know, be mindful there may be a  12 protest coming down to headquarters. And our  13 direction to the officers that were at internal  14 affairs was follow the group at a distance, keep  15 traffic off of them, but let them march wherever  16 they're going to march and try to be as low  17 profile as you can. Obviously our thought was  18 because, you know, they're protesting police, we  19 don't want to be right on top of them if we can  20 help it.  21 So then at the same time, our community  22 response team that was at Kelton and Gault and  23 said that things had gone downhill. Basically the  24 group had stopped and turned around right on top</p>	<p style="text-align: right;">Page 24</p> <p>1 Livingston and Lockbourne. They continued kind of  2 went -- reverted back to their previous, you know,  3 previous, you know, activities where they were --  4 when the light went red, they would go out in the  5 street and they would make their way back.  6 I was on the phone off and on with  7 Sergeant Fuqua. He ended up being out there at  8 the scene, because, like I said, he knew some of  9 the organizers, so he was trying to help out. As  10 the situation got worse and worse downtown, I  11 started releasing more people from our area,  12 Livingston and Lockbourne, and sending them  13 downtown.  14 I think by the end, and I want to say  15 it was just getting dark, I was by myself at the  16 radio room and Fuqua was by himself with the --  17 what was left of Livingston and Lockbourne. And  18 because I wasn't going to leave until he was, you  19 know, away from the scene.  20 So when he said he was leaving, I left  21 the radio room and started driving downtown to  22 meet up and go to headquarters and then make my  23 way to Broad and High. As I'm driving downtown,  24 Fuqua calls me and he said -- he goes, I just got</p>
<p style="text-align: right;">Page 23</p> <p>1 of them. And a lot of us from the radio room then  2 responded to Kelton and Gault to try to help  3 de-escalate that. And eventually we were able to  4 de-escalate that one. There was a lot of  5 shouting, a lot of yelling, but eventually the  6 group turned west on Gault and then made their way  7 eventually back to Livingston and Lockbourne, so  8 they never went to the freeway.  9 Once that happened, at the same time --  10 and I know this is getting confusing, we're  11 bouncing back and forth a lot, but around that  12 same time is about when the ARA group went to  13 Broad and High and that -- the cruiser got  14 surrounded. And the word was is that it was going  15 downhill at Broad and High.  16 So I think at that point, Chief Woods,  17 Deputy Chief Woods, now obviously Interim Chief  18 Woods, and Sergeant Baker, who's his aide, and  19 then they, you know, took some of our resources  20 from the Livingston and Lockbourne area and  21 started going downtown to help that out. I stayed  22 at Livingston and Lockbourne.  23 And as we went back to the radio room,  24 the group, the protest group went back to</p>	<p style="text-align: right;">Page 25</p> <p>1 off the phone with the organizer, he said that the  2 group that's downtown right now is Columbus ARA.  3 And I said, Shawn, that doesn't mean anything to  4 me. And he goes, they're the group that took over  5 the Stonewall parade a couple years ago. And then  6 it clicked, because I knew about the incident  7 where the -- I think the four individuals had  8 taken over kind of the Stonewall parade and  9 officers had been asked to come in, and then they  10 arrested them. And then they kind of like became  11 a thing where I think there was a split in  12 Stonewall and there was kind of a power struggle  13 in Stonewall leadership. So I had heard about all  14 that. So once I had the context, I knew kind of  15 what we were dealing with a little bit more.  16 So Sergeant Fuqua, the last thing he  17 said to me was he goes, the organizer for  18 Livingston and Lockbourne said that the ARA is  19 going to do whatever it takes tonight to provoke a  20 police response. So that was the -- kind of the  21 last thing I heard as I'm pulling up downtown.  22 I parked at headquarters and then I  23 walked to Broad and High and met up with Chief  24 Woods and the other -- you know, the individuals</p>

1 that were there. And then by that point, there  
 2 was already the skirmish line, there was already  
 3 officers in riot gear and the, you know, things  
 4 were starting to get heated.  
 5 Q. Okay. That was a lot to take in, but  
 6 first of all, let me make sure I understand your  
 7 role. Were you -- and if my terminology is wrong,  
 8 please correct me. Were you the scene commander  
 9 on the 28th?  
 10 A. So Chief Woods was out there, so he --  
 11 typically a deputy chief is the incident  
 12 commander.  
 13 Q. Incident commander, okay.  
 14 A. Yeah. And the commander -- commander,  
 15 me, is the operations section chief, or there  
 16 could be commanders in other -- like a logistics  
 17 chief or a -- a planning sections chief, I mean,  
 18 it just depends on what the roles are, it's all  
 19 through the, you know, the incident command system  
 20 or ICS. But I would have been the operations  
 21 section chief.  
 22 Q. Okay. So -- and so you were there,  
 23 when did you start your -- your duty on the 28th?  
 24 A. Well, I mean, when I got to work was

1 probably 8:00 a.m.  
 2 Q. Okay. And when was it that you  
 3 actually went off duty?  
 4 A. 3:00 a.m. the next day.  
 5 Q. Okay.  
 6 A. 3:00 or 4:00.  
 7 Q. And so as I understand it, your time  
 8 was split between Livingston and Lockbourne,  
 9 downtown, later on at least --  
 10 A. Yeah.  
 11 Q. -- and the radio room?  
 12 A. Yeah. The radio room was really like I  
 13 said, just our staging area for the Livingston and  
 14 Lockbourne --  
 15 Q. Right.  
 16 A. -- area.  
 17 Q. Right.  
 18 A. So, yeah, I think in terms of the two  
 19 theaters, it's Livingston and Lockbourne and  
 20 downtown.  
 21 Q. And correct me if I'm wrong, from your  
 22 descriptions and, you know, I am trying to be  
 23 careful with time here, but I think this is going  
 24 to take a little longer than I thought, you -- you

1 were able to resolve any issues with -- not you  
 2 personally, but under your supervision -- ARA in  
 3 terms of -- in terms of internal affairs and the  
 4 marching, at least up to the time things started  
 5 happening downtown, you were -- your officers were  
 6 able to handle it and keep a low profile?  
 7 A. Yeah. My understanding was from  
 8 talking to them, they were able to follow at a  
 9 distance. They never got really close, but they  
 10 were able -- they were, I don't know whether it  
 11 was a half a block or a block or whatever, but  
 12 they were able to stay behind, block traffic from  
 13 coming up on them and so that there wasn't  
 14 necessarily, like I said, cars pulling into the  
 15 middle of the march, which is something we always  
 16 worry about. So, yeah, that was my understanding.  
 17 Q. Okay. So that segment, it went okay?  
 18 I mean, there wasn't violence or threats or there  
 19 was no need to use non-lethal weapons to  
 20 accomplish the goal that you -- your -- I don't  
 21 want to call them troops, but your officers  
 22 accomplished, especially that section?  
 23 A. Right. As far as I know, sir, there  
 24 were no contact at that point. Our big concern,

1 like I said, was a freeway entrance.  
 2 Q. Right.  
 3 A. And then the only -- you know, the  
 4 biggest problem we had internally was lack of  
 5 intelligence at that point. We had no idea where  
 6 they were going, what their intent was, so it --  
 7 Q. Peaceful -- I'm sorry, I don't mean to  
 8 interrupt.  
 9 But so you handled it on the fly  
 10 without having a clear idea where things were  
 11 going to end up, but you did keep them off the  
 12 freeway and without having to use force?  
 13 A. Yes, sir.  
 14 Q. And that was generally true of the  
 15 situation out at Lockbourne, you came up with a  
 16 solution so that they could demonstrate sometimes  
 17 in the street, other times off the street, they  
 18 marched, you took the necessary steps, maintaining  
 19 a low profile to make sure there was no risks to  
 20 anybody at the freeway entrance?  
 21 A. Yes, sir.  
 22 Q. Okay. That -- then at some point, and  
 23 I'm still a bit unclear of it, you end up  
 24 downtown?



1 A. Yes.  
 2 Q. Broad and High, right?  
 3 A. Yes.  
 4 Q. And that was a much more complicated  
 5 situation, I take it?  
 6 A. Yes.  
 7 Q. And about what time did you physically  
 8 get there?  
 9 A. I want to say it was 8:00, 9:00, you  
 10 know, I can't be exact. It was dark and late May,  
 11 so probably was closer to 9:00.  
 12 Q. Okay. And up to that time, your focus  
 13 wasn't really on the downtown scene?  
 14 A. No.  
 15 Q. Okay. And were you out in the Broad --  
 16 Broad/High area the rest of the night physically?  
 17 A. Yes.  
 18 Q. Okay.  
 19 A. I mean, I was in the downtown area,  
 20 obviously towards the, you know, after things all  
 21 broke loose, I mean, we were all over the southern  
 22 part of downtown. I don't think, for the most  
 23 part, I was north of Broad Street much. It was  
 24 pretty much Broad and High to the south.

1 Q. Broad and High to the south? All  
 2 right.  
 3 Did you have your body cam on?  
 4 A. I did.  
 5 Q. Do you know whether --  
 6 A. I don't know whether -- I don't know at  
 7 what point it died. I know at some point it died.  
 8 I had it on at Livingston -- Livingston and  
 9 Lockbourne when we showed up at the scene there at  
 10 Gault for -- Kelton and Gault for a little bit.  
 11 And then I had it on, I know at -- initially at  
 12 Broad and High, and at some point during the night  
 13 it died.  
 14 Q. You know, this reminds me of something  
 15 I didn't ask you that I should have. Have you  
 16 reviewed any information, whether it's a copy of  
 17 the lawsuit or reports or video before coming to  
 18 the deposition today at any time?  
 19 A. No. I mean, I have watched some of my  
 20 -- previously I've watched some of my video from  
 21 Father's Day.  
 22 Q. Okay.  
 23 A. But no in terms of the rest of it. I  
 24 know when the lawsuit was initially filed, I think

1 there's a zone five officer that was named on it,  
 2 so I think I forwarded -- I got a copy of that and  
 3 then forwarded it up as part of our policy, and in  
 4 terms of recommending whether, you know, the city  
 5 represents the officer or not.  
 6 Q. Okay. And I assume you recommended  
 7 that the city provide a defense?  
 8 A. Yes, sir.  
 9 Q. And is that routine?  
 10 A. Yes. Any time there's a civil lawsuit  
 11 against an officer, it's in our directives, we --  
 12 the officer writes a letter up saying, I've been  
 13 named in a lawsuit, this is what it pertains to,  
 14 they provide a copy of any documentation and they  
 15 forward it up through their chain of command. And  
 16 in their letter, they would request city  
 17 representation, you know, if it was part of their  
 18 official duties, so that is -- that is fairly  
 19 routine.  
 20 Q. And who is the officer that was named,  
 21 if you remember?  
 22 A. I do not remember.  
 23 Q. Okay. Did you re-read those documents  
 24 for this depo, his letter?

1 A. I didn't.  
 2 Q. Okay. Have -- did you review your own  
 3 body cam footage before -- other -- you know, not  
 4 back then, I'm talking about more recently?  
 5 A. No. Unfortunately, sir, I -- it's been  
 6 very busy here, I would say the past couple weeks,  
 7 but really it's been the past eight months, and I  
 8 haven't had as much time to prep for stuff --  
 9 Q. Yeah.  
 10 A. -- as I would like.  
 11 Q. It's not a criticism. I just wanted to  
 12 know.  
 13 So do you know or do you have any idea  
 14 of when your body cam on the 28th stopped  
 15 recording?  
 16 A. I do not.  
 17 Q. Okay. What was your -- I mean, what  
 18 was your job -- I guess, Deputy Chief Woods was  
 19 the incident commander. Did you have a specific  
 20 assignment on the 28th that he gave you?  
 21 A. You know, I would be the operations  
 22 section chief, it's my zone, we're having a  
 23 civil -- you know, civil disturbance or a protest  
 24 on my zone, so that is -- that would be the role

1 that I would play.

2 Q. So you were basically the second in  
3 command, and for practical purposes, directing the  
4 officers --

5 A. Yes, sir.

6 Q. -- as things developed? Okay.

7 Did you at that -- did you see any use  
8 of chemical weapons during your time that evening  
9 downtown?

10 A. Yes.

11 Q. Okay. Did you see any officers  
12 spraying individuals, let's talk about I think  
13 they're called K-9s, is that the right terminology  
14 for the larger mace dispensers?

15 A. No. It would be Mark 9s.

16 Q. Mark 9s. Thank you. I have a habit of  
17 getting that wrong.

18 A. That's okay.

19 Q. I guess I like dogs and I always think  
20 of K-9, but --

21 A. Right.

22 Q. -- they don't spray any -- well, I  
23 guess they do spray things. Anyway...

24 Can you -- did you see Mark 9s being

1 back and took them to the prisoner transport  
2 vehicle, which I think we had right around High  
3 and Gay. And that was the first, I think, use of  
4 mace that day was right there.

5 As for other uses of mace that were --  
6 that were not on the street, I know that the  
7 individuals that broke into the Statehouse when  
8 our officers were going into the Statehouse and  
9 grabbing them, and I know that there was some uses  
10 of mace there on the Statehouse steps.

11 Q. We don't really -- I know that, and we  
12 don't need to spend time on it, because there's no  
13 issue about that, at least for purposes of today.

14 A. Yeah. So in terms of like spraying  
15 people on the sidewalk or spraying people that  
16 weren't in the street, that's the first two things  
17 that come to mind. I can't think of any other  
18 uses of mace that were on the sidewalk. But,  
19 again, there were thousands of people out there  
20 and, you know, I didn't see everything.

21 Q. So -- and that -- I was going to ask  
22 you that. When you arrived, I think you said it  
23 was 8:00ish, is that roughly when you showed up?

24 A. I know it was dark.

1 used to spray people who were standing on  
2 sidewalks?

3 A. Standing on sidewalks?

4 Q. Yeah. Not in the street, on sidewalks?

5 A. I can't say specifically that except  
6 for at one point there was a group -- so Broad and  
7 High, we had our line of officers kind of on the  
8 north part of that intersection across High  
9 Street. That Tim Hortons is on the northeast  
10 corner of Broad and High, and it's kind of  
11 elevated -- there's kind of an elevated walkway or  
12 elevated sidewalk there.

13 Q. Yes.

14 A. And officers kind of were up right  
15 against that. There was a group -- there was a  
16 large crowd of people that were kind of standing  
17 over that elevated thing. At one point, I saw an  
18 officer spray that, somebody -- it was at that --  
19 on that elevated crosswalk. And my impression  
20 was, and from what I was told, was somebody up  
21 there had thrown or hit or done something to the  
22 officer and they sprayed as a reaction to that.

23 And I know that at one point then they  
24 pulled an arrest, somebody that was under arrest

1 Q. Oh, it was already dark?

2 A. Yes. It was --

3 Q. Okay. This is -- I'm sorry. I don't  
4 mean to interrupt you. Please go ahead.

5 A. No.

6 Q. So I know this is summertime, right?

7 A. Yes.

8 Q. So it's --

9 A. So I remember it being dusk when I left  
10 Livingston and Lockbourne. And as I was walking  
11 up to Broad and High, it was completely dark.  
12 Q. Okay. Just based on your own personal  
13 experience, wouldn't that mean it was probably  
14 closer to 8:45, 9:00 more like when -- after  
15 sunset in the summertime?

16 A. Yes, sir.

17 Q. Springtime?

18 A. Yes, sir.

19 Q. Okay. And you were -- and you're  
20 saying when you arrived, there were what you  
21 described as thousands of people?

22 A. Well, it looked like hundreds when I  
23 first got there.

24 Q. Okay.

1 A. The height of it around 11:00, 12:00, I  
 2 would say there was probably -- it was high  
 3 hundreds, you know?  
 4 Q. Okay.  
 5 A. You know, but, I mean, it was -- it  
 6 was -- there was a lot of people.  
 7 Q. Okay. Jeff, my colleague, just checked  
 8 on sunset that day on the Internet and it was  
 9 8:52.  
 10 A. Very good.  
 11 Q. Given that, would you agree with me  
 12 that in terms of it being dark, it would have been  
 13 close to have to have been 9:00 or after?  
 14 A. Yes, sir.  
 15 Q. Okay. Also that -- when you say the --  
 16 someone threw something at that officer who  
 17 sprayed that you were aware of or saw, he  
 18 didn't -- was he able, amid this crowd, to just  
 19 spray that person or was he doing a spray of  
 20 people in that area?  
 21 A. I don't know, sir.  
 22 MS. TANOURY: Objection.  
 23 A. I didn't catch the whole thing. It was  
 24 one of those, I was 50 feet behind the line and I

1 was talking to, you know, I -- whether it was one  
 2 of the lieutenants or Deputy Chief Woods or  
 3 whatever, but I wasn't looking directly at that  
 4 area. Once I heard the disturbance, obviously my  
 5 attention went to that direction.  
 6 Q. Who was the officer that did that  
 7 spray?  
 8 A. Sir, I don't know.  
 9 Q. Okay. And did -- would you have  
 10 reviewed a use of force report for that incident?  
 11 A. I don't know. I reviewed -- I had a  
 12 large stack of use of force reports after that  
 13 initial time period. I was, you know, in the  
 14 process -- by the time I got them from the  
 15 lieutenants, it was probably mid June and --  
 16 Q. Oh.  
 17 A. -- the direction I received that we all  
 18 received was stop everything you're doing and  
 19 forward everything to Baker Hostetler. So I  
 20 packed everything up and I forwarded it to IA who  
 21 forwarded everybody's after actions and uses of  
 22 force reports to Baker Hostetler.  
 23 Q. So you actually did not have the  
 24 opportunity to systematically review use of

1 report -- use of force reports related to these  
 2 spring demos?  
 3 A. I went through some. I went through --  
 4 I know that, you know, that I know the general  
 5 areas where, like I said, zone five officers  
 6 forwarded their -- you know, their reports. But  
 7 that first night, there was no -- you know,  
 8 systematic I know that zone five officers are here  
 9 and zone four officers are here and zone --  
 10 because it was one of those, everything happened  
 11 at once and we were, you know, every -- you know,  
 12 we basically had no -- no plan for how that  
 13 escalated.  
 14 So it was -- you know, our plan had  
 15 been -- for Livingston and Lockbourne, our plan  
 16 had been for internal affairs. We didn't have a  
 17 plan if they marched Broad and High and all of a  
 18 sudden the crowd, you know, quadruples in size, so  
 19 we had officers assigned in different locations at  
 20 that point.  
 21 Q. Okay. But the bottom line is you  
 22 really never had the opportunity to do a  
 23 systematic review of use of force reports during  
 24 this period?

1 A. No. We -- everything got forwarded to  
 2 Baker Hostetler and we were told to stop all  
 3 reviews.  
 4 Q. That reminds me of something else. In  
 5 a situation like this when you're dealing with  
 6 crowd control and there's a lot of different  
 7 interactions at different times, is each officer  
 8 expected to write a separate use of force report  
 9 for each time they use a chemical weapon or is it  
 10 more after -- after the event or after duty, but  
 11 write up the ones that come to mind? What really  
 12 happens?  
 13 A. It depends on I guess how it happens.  
 14 So if I'm the lieutenant or I'm the sergeant and,  
 15 you know, we're dealing with a group of protestors  
 16 in front of us and we see activity or we've been  
 17 giving warnings and we have an enforcement action  
 18 we're taking, and I, as the supervisor, order that  
 19 use of force, that should probably be written --  
 20 that's going to be written up by the lieutenant or  
 21 by the sergeant who's giving the order. And it's  
 22 going to say, I directed my squad consisting of,  
 23 you know, these officers, and I directed them to  
 24 use a chemical irritant on this crowd because of

1 this behavior and for the -- you know, for these  
 2 lawful purposes or whatever.  
 3 If -- as an officer standing on the  
 4 line, if the guy -- you know, a protestor comes up  
 5 and pushes me or punches me and I use a chemical  
 6 irritant on my own because I'm in a use of force  
 7 situation, that officer then would be responsible  
 8 for writing that up. So it depends on the  
 9 circumstances.  
 10 Q. What I'm really asking is as a  
 11 practical matter, you know, as I understand it,  
 12 officers were doing shifts like 12 hours long and  
 13 they could have multiple interactions with people  
 14 which could involve spraying or some kind of  
 15 pushing or, you know, interactions that were  
 16 physical, but not -- you know, not striking them  
 17 with a baton or anything.  
 18 A. Right.  
 19 Q. Do they have to report -- are they  
 20 expected to report each of those incidents --  
 21 A. Yes.  
 22 Q. -- separately?  
 23 A. It depends on -- I would say, again,  
 24 depends on the circumstances. If it's all part of

1 Q. Sorry, end of the shift they do it?  
 2 A. Yes. They're supposed to report it by  
 3 the end of the shift.  
 4 Q. Okay. And as I'm understanding it,  
 5 there's -- there's two general situations when  
 6 officers may use non-lethal weapons. One is when  
 7 a lieutenant or supervisor directs their officers  
 8 to use the weapons because of a situation that the  
 9 supervisor feels requires it.  
 10 And then secondly, officers have  
 11 discretion to use those weapons, I mean, according  
 12 to the policies and guidelines when their judgment  
 13 is that they're necessary given their individual  
 14 situation?  
 15 A. Yes.  
 16 Q. Okay. Did -- did you see any firing  
 17 of -- of the -- what are they called, multi baton  
 18 weapons? What do you refer to those -- they look  
 19 like rifles that shoot the wooden ammunition?  
 20 A. Knee knockers.  
 21 Q. Knee knockers? Okay.  
 22 Actually, you're saying that brings up  
 23 a question I have. Did you take training as a  
 24 grenadier yourself?

1 the same -- if I'm standing at the same  
 2 intersection dealing with the same person and I  
 3 have, over the course of a half an hour, two or  
 4 three different, you know, uses of spray, I think  
 5 that you could do that as one event.  
 6 You would say, I -- you know, over the  
 7 course of 15 minutes, I sprayed -- you know, I  
 8 deployed three, you know, two-second bursts of  
 9 chemical mace, you know, to do the -- you know,  
 10 for this end.  
 11 But if it's at different intersections  
 12 with different people under different  
 13 circumstances, then my direction would be that,  
 14 yes, they have to fill -- you know, they have to  
 15 report those separately.  
 16 Q. And when do they do it?  
 17 A. Well, sir, that was -- you know,  
 18 obviously, you know, it should be, you know, by  
 19 the end of the shift. Obviously those first  
 20 couple days were very chaotic --  
 21 Q. We -- you're on mute now for some  
 22 reason. Okay.  
 23 A. My fault. Anyway, it said I was muted  
 24 for a second.

1 A. I did not.  
 2 Q. Okay. Have -- did you -- have you ever  
 3 had training using that weapon, what you call knee  
 4 knockers?  
 5 A. Yes, I have. Before we called them  
 6 grenadiers and had separate training for officers  
 7 to actually be trained grenadiers, the -- I think  
 8 right around 2015 we had a civil disorder  
 9 training, and I was a newly-promoted lieutenant,  
 10 and I was trained in how to use those.  
 11 Q. Okay. And when you were training, did  
 12 you actually -- you practiced firing?  
 13 A. Yes, sir.  
 14 Q. And were you instructed or was it your  
 15 understanding that the weapons could or could not  
 16 be fired directly at people?  
 17 A. So my understanding and my direction  
 18 that you fire several feet in front of the target  
 19 so that it -- basically you're skipping and the --  
 20 skipping the rounds towards them.  
 21 Q. Okay. And based on your own practice,  
 22 when you do that, is it -- aren't there times when  
 23 the bounce goes above knees and above legs?  
 24 A. So during my practice, no, because I

1 never fired at individuals. I -- I fired in a  
 2 static environment in a parking lot in a training  
 3 environment, so I didn't have -- I didn't have all  
 4 the variables there.  
 5 Q. Okay. Based on just your experiences  
 6 as a, you know, law enforcement officer and being  
 7 at crowd scenes, isn't it the case that if you --  
 8 if you're trying to skip or bounce a double baton  
 9 shot, a lot of factors influence where they go?  
 10 It can be whether the level of the ground, the  
 11 nature of the surface, whether you accidentally  
 12 hit a curb or object that's in the street, all  
 13 those things affect both the direction and the  
 14 height, don't they?  
 15 A. Yes, sir. There can be multiple  
 16 variables that could change that, yes.  
 17 Q. Okay. Under any circumstances, based  
 18 on what you know, have officers been trained they  
 19 may, in some circumstances, aim directly at the  
 20 main torso or head of a suspect or person that  
 21 needs to be shot at? I don't know how else to put  
 22 it.  
 23 A. Not if it's being used as less than  
 24 lethal. I mean, if you're going to aim at the

1 Q. And, Commander, I want to make this  
 2 clear to you, if you don't know something, it's  
 3 fine with me just to tell me that. I understand  
 4 it. I don't know that I want you to look up the  
 5 wording at the moment, and I certainly don't want  
 6 you to search for training videos, just --  
 7 A. Yeah, I know that I was trained that  
 8 we're not aiming at the head; that we're trying to  
 9 skip it in. I don't remember how specific the  
 10 policy gets.  
 11 Q. Okay. Fair enough.  
 12 So let's go back to the 28th. And I'm  
 13 going to have to try to speed up, and  
 14 unfortunately that means I'm going to try to ask  
 15 more yes and no questions.  
 16 So did you see the use of the knee  
 17 knockers during the 28th after -- after dark when  
 18 you came downtown, I mean, personally? I'm asking  
 19 you if somebody reported it?  
 20 A. I believe I did.  
 21 Q. Okay. Did you see any occasions when  
 22 they -- they were being shot at people who were  
 23 leaving the area?  
 24 A. No.

1 head, then it would be a deadly force situation --  
 2 Q. And is that --  
 3 A. -- so...  
 4 Q. -- is that the department's policy, as  
 5 you understand it, that shooting -- officers, if  
 6 they shoot at a suspect at their head, that is  
 7 considered a deadly force use, not just a skip  
 8 bounce?  
 9 A. Yeah. My understanding would be if  
 10 they're aiming the knee -- if they're aiming that  
 11 at somebody's head, then that would be what we  
 12 would consider a level eight.  
 13 Q. And what is it if they're aiming at  
 14 their body, not trying to skip it, not their head,  
 15 but at their chest, stomach, arm, you know,  
 16 shoulders, upper part of their torso?  
 17 A. I -- I don't know if that would be a --  
 18 I mean, that would be a level eight necessarily,  
 19 but I don't know if that would necessarily also be  
 20 in policy.  
 21 Q. Okay. Is the policy that -- is the  
 22 policy that specific about those questions as  
 23 opposed to training?  
 24 MS. TANOURY: Objection.

1 Q. Okay. Would that be appropriate or  
 2 within policy if someone was moving away, walking,  
 3 like if they left the intersection of Broad and  
 4 High and were heading north away from the area,  
 5 would it have been appropriate to fire at them?  
 6 A. I don't know, per se. I know that as  
 7 we were giving warnings, we were directing people  
 8 that the safe avenue of egress was east. But  
 9 without knowing the circumstances, I can't say  
 10 whether there would be a reason why somebody who  
 11 would be going north would get knee knockers fired  
 12 at them.  
 13 Q. Well, let me put it to you this way:  
 14 Absent some conduct, you know, that constituted a  
 15 threat or indicated that they were not leaving, if  
 16 someone was walking away after a dispersal order  
 17 back to the officers, their back is turned to the  
 18 officers, they're walking away up north on High  
 19 Street, would that be a violation of policy to  
 20 shoot at them with the knee knockers?  
 21 A. I would not direct an officer to fire a  
 22 knee knocker at an individual walking away, absent  
 23 some other kind of threat that that person  
 24 constituted.

1 Q. Okay. Also, in your training and under  
 2 the policy, the goal, at least, and what people  
 3 are trained to do, is to bounce the -- the ammo to  
 4 keep the strike below the waist. Isn't that what  
 5 it's all about?  
 6 A. That was what I was trained on, yes,  
 7 sir.  
 8 Q. I'm not -- I'm -- if I'm understanding  
 9 your answers, you saw some occasions where the --  
 10 the knee knocker -- knee knockers were being used,  
 11 but you -- you can't tell me about any specific  
 12 incident, the exact circumstances, you just  
 13 observed that there were occasions where they were  
 14 being used?  
 15 A. Well, I don't remember saying that I  
 16 don't remember specifics. I think when we got  
 17 to -- we had -- at a certain point advanced to the  
 18 southern part -- the south intersections, so we  
 19 had a skirmish line on the southern part of High  
 20 Street and Broad, and then on the eastern part of  
 21 High Street and Broad. There were still  
 22 individuals in the street blocking our -- blocking  
 23 our movement.  
 24 We had obviously been giving verbal

1 warnings, audible warnings for hours. We had had,  
 2 you know, lots of projectiles thrown at us, rocks,  
 3 scooters, water bottles. The mob was starting to  
 4 destroy the bus shelter at the -- in front of like  
 5 kind of by the McKinley statue on High Street.  
 6 And I think at that point, we used knee knockers  
 7 to try to get people out of the street so that we  
 8 could get to the mob that was destroying the bus  
 9 shelter.  
 10 And at that point then, that's when  
 11 there was the mass storming of the Cap -- you  
 12 know, the Statehouse. And that was kind of when  
 13 we broke the skirmish line up and just went to try  
 14 to protect the Statehouse, because I think there  
 15 were only a handful of troopers on duty and they  
 16 couldn't -- they couldn't prevent it.  
 17 Q. Commander, let me -- let me ask you  
 18 some questions about your use of the word "mob."  
 19 Is it your testimony that if we look at body cam  
 20 footage of the individuals who were trying to tear  
 21 down or damage the bus stop near the corner of  
 22 Broad and High, that there were hundreds of people  
 23 involved in that?  
 24 A. No, I wouldn't say hundreds.

1 Q. What -- isn't it more accurate to say  
 2 that may be somewhere between 20 or maybe a few  
 3 more people were engaged in trying to damage that  
 4 bus stop?  
 5 A. That would probably be a fair  
 6 description.  
 7 Q. Okay. Also isn't it the case that on  
 8 the 28th, as the hours got later and later, much,  
 9 if not most -- putting aside the Statehouse, I  
 10 mean, I -- do you have an actual count now in  
 11 hindsight available to you that you've seen of  
 12 actually how many people really got into the  
 13 Statehouse or even tried?  
 14 A. There were very few. There was a  
 15 large -- there was a large number that basically  
 16 ran at the Statehouse and got up on the steps.  
 17 There was a very small number that actually got  
 18 in. You know, as we were running up to try to  
 19 stop it, a lot of people fled, you know, north,  
 20 south, they ran. But there was a very large --  
 21 much larger than the contingent that just was  
 22 damaging the bus stop.  
 23 Q. Right.  
 24 A. There was a large number of people that

1 ran at the Statehouse that, like I said, but I  
 2 think there was only several that actually gained  
 3 entrance. There was -- there was more than  
 4 several, but not the entire group obviously that  
 5 damaged Statehouse property, whether throwing  
 6 bricks through the windows or whatnot. But like I  
 7 said, there was only several that got in.  
 8 Q. And in terms of the Statehouse area,  
 9 the grounds, isn't it also true that the crowd  
 10 that -- first of all, throughout the  
 11 demonstrations, I don't know how many days you  
 12 were there, I'm going to be asking you that  
 13 shortly, that was kind of like a gathering area  
 14 throughout the demonstrations, people would gather  
 15 around the Rhodes -- is it Rhodes, isn't there a  
 16 statute there, McKinley -- McKinley, right?  
 17 A. Yes, sir.  
 18 Q. And there was even a combination of  
 19 protestors and just street people who would camp  
 20 out there, I mean, that was almost continuous  
 21 throughout the demonstrations, wasn't it?  
 22 A. It became so. It hadn't been up until  
 23 that point. Although during the -- you know, the  
 24 spring demonstrations with Ohioans, but there

1 would always be some, you know, people, you know,  
2 when there were demonstrations at the McKinley  
3 statue. But it became a permanent kind of fixture  
4 after that first weekend.

5 Q. Okay. And on the 28th as events  
6 unfolded again, getting into the much later hours  
7 of the night, most of the violence was focused on  
8 is it -- I think it's State Street? Isn't that  
9 just to the south of the capitol building where  
10 the -- where the Ohio Theater is and then around  
11 that area and across the street from Riffe, isn't  
12 that where some of the worst physical damage was  
13 done to property and -- and your officers were  
14 pelted with various kinds of thrown material?

15 A. Yes. The majority of the thrown  
16 material at officers happened at Broad and High,  
17 and part of that is just because the length of  
18 time we were there. And because the first however  
19 many hours we basically were telling our officers  
20 not to react. You know, like I said, we -- we had  
21 that information that they were trying to provoke  
22 a response, so we were trying not to give them  
23 that response.

24 And I think that's why -- one reason

1 A. Yes.

2 Q. Okay. And at that time in the evening,  
3 the number of people in the downtown area had  
4 declined quite a bit, had it not?

5 A. So, yes, I mean, it reached its height  
6 in terms of people, I think around 11:00. And  
7 then as the night went on, I think those that  
8 stayed were people that were looking for -- you  
9 know, looking for trouble, so to speak.

10 You know, the first -- obviously the  
11 first incident where I physically knew of the  
12 property destruction was the bus stop in front of  
13 -- the COTA stop in front of the Statehouse, and  
14 that's because I was -- I was right there, I was  
15 watching it. And then obviously the Statehouse.

16 After that, I walked to State Street,  
17 and we had an officer, one of our black officers,  
18 and he was getting just all kinds of things  
19 screamed at him by people calling him names,  
20 calling him the traitor. And so I went up and I  
21 stood next to him and just let him know that I was  
22 with him and everything.

23 And as I'm standing there, that's when  
24 I heard the glass break and I turned and we saw

1 why you saw the escalation of weapons. So it  
2 started with water bottles, and when that didn't  
3 get the response they wanted, then it went to  
4 rocks. And when that didn't get the response they  
5 wanted, it then went to scooters. And, you know,  
6 once you're having scooters thrown at officers'  
7 heads, it's a little bit hard, you know, that  
8 could do some serious damage, so of course rocks  
9 could, too.

10 But as we progressed from the  
11 Statehouse down to State Street, there was some  
12 incidents of weapons being thrown at officers, but  
13 that's really when the transition happened to the  
14 looting and the damage --

15 Q. Right.

16 A. -- to property. And it was more us at  
17 that point chasing the crowds and trying to stop  
18 property destruction for businesses, and that's  
19 kind of where the transition happened was right  
20 around State and High.

21 Q. Yeah. And that -- that transition  
22 happened, I'm just asking you after the -- those  
23 individuals attempted to break into the  
24 Statehouse?

1 the Ohio Theater, the ticket booth of the Ohio  
2 Theater catching on fire and we saw people running  
3 away. So we all kind of ran that way. I think I  
4 got on the air and asked for somebody with a fire  
5 extinguisher and to call CFD. Our officers were  
6 able to get that out.

7 And then from there, it just seemed  
8 like one after another kind of the gates had  
9 opened, so to speak. And I remember then KC  
10 Sports was the next one we heard about, and the  
11 CVS, and there was a bank and/or another office  
12 building. I mean, basically it was just one  
13 business to the next. And that was kind of the  
14 transition time.

15 Q. Yep, and I appreciate that. And I  
16 appreciate your descriptions.

17 You mentioned seeing -- did you -- let  
18 me ask you now because it has -- it's going to  
19 affect how long this depo is, how many nights or  
20 days and nights were you physically at the  
21 demonstrations? I understand you were there the  
22 28th. When's the next time you went?

23 A. Zone five is my zone, I was there every  
24 day that I was not physically ordered to not be

1 there. So I was there the 29th, I was there the  
2 30th, the Sunday I was told to stay home because I  
3 had been working 18 hours, 19 hours a day. And  
4 then I -- you know, I think the next week we kind  
5 of started a rotation. But, I mean, I was -- I  
6 was there a ton of time.

7 Q. Okay.

8 A. Like I said, zone five is my  
9 responsibility.

10 Q. And zone five is -- what does it cover?

11 A. Downtown, the Short North and the near  
12 east side.

13 MR. GITTES: Okay. You know, I'm going  
14 to request a break here. We have breakout rooms,  
15 so Jeff and I will disappear for a few minutes.  
16 Because in light of that, which I did not know you  
17 were there every day, I want to kind of try to  
18 feel my way.

19 Alana, this clearly is not going to be  
20 over at noon. So I -- and I did not anticipate  
21 that and I know John didn't. So I want to think  
22 about ways I can try to get as much done as I can  
23 today and allowing a little bit of overrun and see  
24 if I can finish it somehow. That's why I want to

1 my best to narrow this down just so we can have a  
2 chance of making our goal.

3 So what I'm going to do is instead of  
4 going through each and every day and the kind of  
5 detail we were just doing, I'm going to ask you  
6 some more broader questions that hopefully you can  
7 answer, you know, briefly.

8 Just going back to the 28th, have  
9 you -- the command structure for that day and  
10 subsequent days was essentially that your role as  
11 the operations commander was to make decisions  
12 about where units or where groups of your officers  
13 should be located and the general parameters of  
14 what their assignment was with respect to whatever  
15 that location was; is that accurate?

16 A. Yes and no. In regards to the 28th,  
17 the way it worked out was I was more on the street  
18 level with the lieutenants and the sergeants  
19 working more directly with them. Typically, and I  
20 think what you'll find and probably what you've  
21 already heard, is after that first weekend, we got  
22 back to our more traditional ICS system where the  
23 operations section chief, the commander is in the  
24 emergency operations center kind of with the

1 take a break.

2 MS. TANOURY: Okay. And you know,  
3 Officer Johnson isn't scheduled until 12:30.

4 MR. GITTES: Oh, I didn't know that. I  
5 thought he was at 12:00. That helps.

6 MS. TANOURY: He's at 12:30, and we'll  
7 be, you know, flexible within reason --

8 MR. GITTES: Okay.

9 MS. TANOURY: -- if we have to try and  
10 ask if he can shift a little bit.

11 MR. GITTES: Yeah, and you all have  
12 a -- I think you have a conference call with the  
13 Court.

14 MS. TANOURY: At 2:00.

15 MR. GITTES: Yeah, so that's going to  
16 interrupt if it runs over, that's why I'm trying  
17 to figure out -- well, let me not waste more time.  
18 Let me talk to Jeff real quick and I'll see if I  
19 can figure out a way to keep this shorter despite  
20 what I'm learning.

21 MS. TANOURY: Okay.

22 MR. GITTES: Okay.

23 (A recess is taken.)

24 Q. All right. Commander, I'm going to do

1 30,000 foot view with the incident commander.

2 That first weekend, that first day, the  
3 28th, the commanders were out on the street with  
4 lieutenants and sergeants and everything like  
5 that, so -- and that was out of necessity.

6 Obviously we've already talked about some of the  
7 factors that played into that.

8 But, yes, I mean, typically that would  
9 be -- you know, as the operations section chief, I  
10 am using the intent of the incident commander and  
11 I'm saying, this is our goal, use our policies and  
12 tactics to make it happen. This is what -- you  
13 know, this is our objective, this is what we want  
14 and that's what the lieutenants then would carry  
15 out. I obviously, because I was out on the street  
16 on the 28th, I was a little bit more hands on in  
17 terms of tactics, you know, as far as that went.

18 Q. So let's -- let's take what was  
19 happening on the 28th first. So were you actually  
20 making individual decisions about whether  
21 non-lethal force would be used each time, or was  
22 that generally going to be a decision made by a  
23 lieutenant or sergeant when it -- when they saw a  
24 need for active use -- let's put aside individual



1 officer decisions. I mean, that's -- as I  
 2 understand it, that always comes up and officers  
 3 have authority to use non-deadly force depending  
 4 on individual circumstances. But in terms of  
 5 making -- notifying officers that non-lethal force  
 6 should be used, was that mostly a decision a  
 7 lieutenant or a supervisor would make for a group  
 8 of officers?  
 9 A. Yeah. Typically that is a lieutenant  
 10 decision. There were some times on the Thursday  
 11 night on the 28th, I think specifically one time  
 12 when we were at the -- we had moved to the  
 13 southern part -- the southern part of the  
 14 intersection of, you know, Broad and High where I  
 15 did direct less than lethal knee knockers going at  
 16 individuals that were in the street that were  
 17 refusing to move that were -- you know, that fit  
 18 our policy.  
 19 So the -- overall, though, for the most  
 20 part during that first couple hours, my role was  
 21 more talking about tactics in terms of not use of  
 22 force, but, you know, what are we going to do  
 23 with, you know, the crowd and to handle the  
 24 situation we're doing.

1 So -- and when I first showed up  
 2 around -- after 9:00ish on Thursday, the first  
 3 thing I noticed was it was a really strong wind,  
 4 and it was coming straight south to north, so it  
 5 was coming into our face, and as bottles were  
 6 being thrown at us.  
 7 And at that time, Deputy Chief Woods  
 8 was still out on the street. One of the  
 9 conversations we had was -- one of the  
 10 conversations I had was, why did we pick the north  
 11 side of the intersection, you know, against the  
 12 wind to be standing? And that's when I think some  
 13 of the sergeants and lieutenants informed me about  
 14 what happened earlier where the uninvolved  
 15 cruiser, you know, was -- happened to be going  
 16 through the intersection, didn't know about the  
 17 protest and the -- you know, basically got  
 18 surrounded.  
 19 And then the officers that had been  
 20 tailing, you know, the march, had to go up and try  
 21 to get the protestors off the cruiser and get the  
 22 cruiser out of there. And so they said it was by  
 23 default that we just ended up kind of on the north  
 24 side into the wind. And at that point, you know,

1 we talked, well, there's nothing we can do about  
 2 it now, we have to, you know, adapt and find a  
 3 better way to handle this.  
 4 So those were the kind of conversations  
 5 that was happening, you know, in terms of, you  
 6 know, what are our objectives and, you know, how  
 7 can we make that happen --  
 8 Q. Okay.  
 9 A. -- so -- go ahead.  
 10 Q. So -- and let's -- so going forward,  
 11 like that's the 28th. So the 29th, 30th, 31st,  
 12 are we still -- there's -- there's a -- there's an  
 13 incident chief, right? I mean, what's the title  
 14 of the deputy chief who's in charge?  
 15 A. That would be incident commander.  
 16 Q. So --  
 17 A. Moving forward to the 29th, yeah, there  
 18 was incident commander and then there were several  
 19 commanders that were charged -- in charge of  
 20 different stuff. I think initially on the 29th,  
 21 we had had, in addition to any activities and  
 22 protests downtown, there was also I believe one  
 23 that was scheduled for Broad and Nelson. And I  
 24 think we were -- there was another one maybe near

1 Livingston and Lockbourne.  
 2 So I remember I had, I think Livingston  
 3 and Lockbourne and Broad and Nelson. Those are  
 4 both on zone five as well, and another commander,  
 5 and I forget who, I think was in charge of the  
 6 downtown stuff. So initially on the 29th, I was I  
 7 think out east monitoring the Broad and Nelson and  
 8 the Livingston and Lockbourne.  
 9 Q. So just to make it clear, you've got a  
 10 lot of the decisions about non-lethal weapons and  
 11 when to use them are made by lieutenants and  
 12 sergeants within the scope of the overall  
 13 tactics --  
 14 A. Yes.  
 15 Q. -- that the operations commander and  
 16 the incident commander develop?  
 17 A. That's correct.  
 18 Q. All right. Now, were you the  
 19 operations commander also on the 29th, the 30th,  
 20 31st, through that weekend?  
 21 A. So I did not work the 31st, I believe  
 22 that was Sunday or -- yeah, I believe that was  
 23 Sunday. I worked Thursday, Friday, Saturday, I  
 24 was off Sunday. I believe I was listed as -- I

1 know by Friday and Saturday there was more than  
2 just -- I was not the only commander at that point  
3 working. You know, they had delineated the tasks  
4 and were bringing other commanders in to help out.

5 So like I said, I remember on Friday I  
6 was -- my, you know, initial assignment was, you  
7 know, the two zone five protests that were outside  
8 of downtown and then, you know, it kind of evolved  
9 because of circumstances later in the evening.

10 Q. Okay. So -- but I'm trying to be real  
11 -- understand the nomenclature, not just what you  
12 were doing. Is there always one operations  
13 commander in addition to an incident commander?

14 A. That is correct, there should be.

15 Q. Okay. And other -- I mean, I gather  
16 from what you've told me, the 28th you were the  
17 operations manager -- commander, I mean?

18 A. Yes. I think obviously as the night  
19 went on, a couple other commanders got called in.

20 Q. No, I understand, but I'm just talking  
21 about the title you carried, that you were the  
22 number two guy?

23 A. Yes, sir.

24 Q. Okay. Was that also true on the 29th?

1 think 3:00 or 4:00, because, again, I had been  
2 there Friday until about 3:00 or 4:00 in the  
3 morning.

4 So I came in Saturday mid afternoon,  
5 obviously I was, you know, briefed up on the  
6 activities of Saturday morning and early afternoon  
7 in terms of the downtown protests. And as I got  
8 in -- walked into the EOC on Saturday afternoon,  
9 before I had even gotten an assignment or  
10 whatever, there was traffic officers screaming  
11 that there was a large group that was trying to  
12 take 670 over by -- in the Short North by Goodale  
13 and North Fourth, that area behind the convention  
14 center. So I forget -- I think it was Chief Woods  
15 I was talking to. But he looked at me and said  
16 go. We had a bunch --

17 Q. I apologize for interrupting, I don't  
18 need the background.

19 A. Okay.

20 Q. I'm trying to find out if you were the  
21 designated operations chief on that Saturday?

22 A. I'm not sure, sir.

23 Q. Okay.

24 A. I was not -- obviously like I said, I

1 A. I'm not positive how it got worked out  
2 in terms of that, but yes.

3 Q. Okay. When's the next time after that?  
4 And I mean, I think Sunday you weren't -- you were  
5 off duty. What's the next time you remember being  
6 designated the operations commander?

7 A. I think there was a -- there was a time  
8 on a weeknight the next week where I worked late  
9 and I was the operations section chief. I don't  
10 remember the specific day.

11 Q. Okay.

12 A. But that was -- I think as we moved  
13 into the 1st, we started getting Deputy Chief  
14 Woods, Chief Quinlan basically put out a schedule  
15 saying, you know, the -- this commander has this  
16 12-hour shift, this commander has this 12-hour  
17 shift, and rotating it from there.

18 Q. And then what about -- so Friday you  
19 ended up being the operations commander again.  
20 What about operations chief, whatever the proper  
21 title is, I'm sorry, what about Saturday, the  
22 30th?

23 A. Saturday I don't remember -- I know  
24 that Saturday I came in about mid afternoon, I

1 came in at 3:00 or 4:00 in the afternoon, so I  
2 would not have been on first shift. Second shift  
3 because of the circumstances that, you know, I  
4 don't know how that got articulated in the -- in  
5 the IAP just because, like I said, I made it two  
6 steps into the EOC and I was told to run out to  
7 the street.

8 Q. Gotcha.

9 And I gather on the occasions going  
10 forward after the -- that weekend, that -- well,  
11 I'm asking this: Did the operations commander  
12 spend significant amounts of time at the  
13 emergency -- what do you -- the EOC, the emergency  
14 operations center?

15 A. Yes, sir.

16 Q. Okay. So, I mean, I'm not saying you  
17 would never go out, but you would be there with  
18 the incident commander viewing and watching as --  
19 you used a nice term for it, from a higher view?

20 A. 30,000 foot view. Yes, typically  
21 that's what the role is of the commander. And as  
22 the protests scaled down a little bit and as we  
23 kind of got our sea legs under us in terms of our  
24 emergency operations, we kind of resorted back to

1 that.

2 Q. Okay. So -- and then that -- given  
3 that structure, the lieutenants and the sergeants  
4 were doing a lot of the on-the-ground direction of  
5 their officers as to implementing the tactics that  
6 you and the incident commander were coming up  
7 with?

8 A. Yes, sir.

9 Q. And that would include how to apply and  
10 use and when to use less than lethal force?

11 A. That's correct.

12 Q. Now, as part of your job, I'll start  
13 with you and what I mean by you as a commander and  
14 as an operation commander on those occasions when  
15 you filled that function, if you saw a use of  
16 non-lethal force outside of policy, did -- were  
17 you expected to report it?

18 A. Absolutely.

19 Q. Okay. Is that also true of the  
20 lieutenants and the sergeants?

21 A. That is correct. That's true of  
22 everybody on the division of police. If you see  
23 somebody, I mean, out of policy, use of force,  
24 then that's -- that's something that needs to be

1 report it to me and then I would ask them to write  
2 a letter up, and then we would ship it over to  
3 internal affairs to investigate.

4 Q. If any -- to your knowledge, did any  
5 patrol officer -- is that the right designation  
6 for your -- the men and women who work under you?

7 A. Yes, sir.

8 Q. In your chain of command I mean?

9 A. Yes.

10 Q. Did any patrol officers report  
11 observing an improper or out of policy use of  
12 non-lethal force at any time during the  
13 demonstrations?

14 A. No, not that I -- not to my knowledge.

15 Q. Okay. Are you aware of any officer who  
16 has been disciplined related to any alleged  
17 inappropriate, out of policy conduct during the  
18 demonstrations, as you sit here today?

19 A. I think there was an officer, not my  
20 chain of command, but there was an officer -- out  
21 of one of the Baker Hostetler ones that they  
22 reviewed that got out of policy. I don't know  
23 what the discipline was or where that is, if it's  
24 been -- if it's been, you know, quote/unquote,

1 addressed immediately.

2 Q. Do you recall yourself at any time  
3 during any of the protests that spring when you  
4 were on duty functioning either as a commander of  
5 your -- of the -- your patrol unit or functioning  
6 as the operations commander or just a commander of  
7 a -- at a particular location, did you ever report  
8 any non-lethal use of force that you felt was  
9 outside of policy or improper?

10 A. No.

11 Q. Okay. To your knowledge, during any of  
12 the days you were involved with supervision of any  
13 personnel, policing or doing police work at the  
14 demonstrations, do you remember any lieutenant or  
15 sergeant -- I actually should say, do you know of  
16 any lieutenant or sergeant who reported improper  
17 or out of policy use of non-lethal force?

18 A. No.

19 Q. Just so I know for sure, if one of your  
20 lieutenants observed improper, out of policy use  
21 of force, would they report to you or are they  
22 permitted to just report it to IAB or somebody  
23 else? What are they supposed to do?

24 A. They could do either. They should

1 adjudicated yet or not, but, yeah, I do believe  
2 there was one.

3 Q. And actually that's what I was going to  
4 question whether or not that -- you understood the  
5 Baker & Hostetler findings were recommendations,  
6 they weren't -- they didn't have the power to  
7 administer discipline, right?

8 A. That is correct, yes.

9 Q. Okay. And if you remember, is the one  
10 you heard about a recommendation of some kind of  
11 discipline or out of -- a finding of out of policy  
12 conduct related to not doing a use of force  
13 report?

14 A. I believe so.

15 Q. Okay. But other than that, you're not  
16 aware of anything that was either through Baker &  
17 Hostetler or any other means resulting in an  
18 actual discipline?

19 A. Not to my recollection, no.

20 Q. Okay. Did -- do you -- were you the  
21 operations manager on June 21st?

22 A. I was.

23 Q. Were you -- during that day, were you  
24 primarily located in the EOC, the emergency

1 operations center, or were you spending most of  
2 your time out in the streets?

3 A. I was out on the street on June 21st.

4 Q. Okay. And -- and on that -- on that  
5 occasion, what was your role?

6 A. So my role officially was the  
7 operations section chief.

8 Q. Okay.

9 A. The reason that I had gone out on the  
10 street myself as opposed to staying in the  
11 emergency operations center was because of all the  
12 series of events that had happened that had  
13 transpired between June 1st and June 21st, and the  
14 changes that had been made to policies and  
15 procedures. And -- and just the tone of  
16 everything that had happened, I felt that it was  
17 important for me specifically personally to be out  
18 on the street directing the events and our  
19 response basically, because our officers had had  
20 so much change and this back and forth and there  
21 was a lot of policy changes, so to speak, or there  
22 had been lots of talk publicly about policy  
23 changes that I wanted them to have the confidence  
24 that -- that their commander was out on the street

1 think it got signed off on the 17th and enacted or  
2 disseminated on the 18th.

3 Q. Okay. I would like you to take a look  
4 at Exhibit 34, and Jeff's going to share that just  
5 so you can eyeball it. And do you know -- are you  
6 sure about the date of its dissemination? Because  
7 I -- first of all, do you recognize -- can you see  
8 this on the screen, Exhibit 34?

9 A. Well, I -- roughly. I'm working off my  
10 phone, because we don't have cameras on our  
11 desktops, so it's -- I can see it, but it's small.

12 But I'm not -- is that --

13 Q. Is that better now?

14 A. Yes, sir. That is a division-wide  
15 e-mail that went out the 16th.

16 Q. Okay.

17 A. So, yeah, it's -- obviously I could  
18 have the dates mixed up between the 16th and the  
19 18th.

20 Q. Okay. Why don't you just take one  
21 minute and you tell Jeff when you need him to move  
22 any part of it so you can read it. And I just  
23 want you to confirm for us that this document  
24 reflects the policy changes that you have

1 with them, and that any decisions that were being  
2 made were being made by my authority and that --  
3 and that I was, you know -- I wanted them to have  
4 confidence that what I was telling them to do  
5 was -- was what I wanted them to do and was within  
6 policy, the new policy as it were. So that's why  
7 I was out on the street on that specific day.

8 Q. And as I understand it, and I would  
9 like you to tell me whether you -- I'm correct,  
10 there was a policy change, both in written form  
11 and in terms of understanding, as -- of, I mean,  
12 understanding that the mayor and others had asked  
13 for a policy change as of June 17th of 2020; is  
14 that your recollection?

15 A. That is correct. I think it got  
16 signed -- it got approved on June 17th, and I  
17 think we disseminated it on the 18th. So, yes, it  
18 was a brand new what we called a rules of  
19 engagement in terms of our -- I'm sorry, was that  
20 me or --

21 (Mr. Marshall entered the deposition.)

22 Q. No, that's another one of our counsel,  
23 John Marshall has joined.

24 A. So, yes, that was a new change. I

1 testified to over the last few minutes.

2 A. Jeff, could you scroll down, please?  
3 Thank you.

4 Can you scroll down a little bit more,  
5 please?

6 Can you scroll down again, please?

7 Q. If it saves time, the second part of  
8 this is not of concern to us.

9 A. This is similar to, but it's not the  
10 same e-mail I'm referring to. The e-mail I  
11 believe is on the 18th. I believe it was sent out  
12 by Deputy Chief Bash. And it actually goes  
13 specifics into the rules of engagement. And that  
14 where it talks about specific actions that  
15 basically if they -- you know, if A happens, then  
16 we can do B.

17 And it talks about the specific actions  
18 of aggressive or non -- aggressive or violent or  
19 turbulent protest groups or crowds. So this is  
20 like the general -- this is what we're doing to  
21 the 2.04 policy. And then on Friday, I think or  
22 Thursday or whatever the 18th is, I think that's  
23 when the more specific rules of engagement came  
24 out.

1 Q. Do you still have that e-mail of the  
2 18th?  
3 A. I can check.  
4 Q. I'm sorry?  
5 A. Yeah, I can check. And also the rules  
6 of engagement starting, I think on that day got  
7 added to the IAP, the daily IAP that emergency  
8 management put out.  
9 Q. Can I ask you to provide Alana the  
10 e-mail that you just talked about from the 18th as  
11 soon as possible after this deposition ends?  
12 A. Sure.  
13 MR. GITTES: Alana, I would request  
14 that you send it to us, okay?  
15 MS. TANOURY: Yep, that's fine.  
16 MR. GITTES: Okay.  
17 Q. All right. So on the 21st, you --  
18 going back to where we were before you looked at  
19 the exhibit. You were the operations commander,  
20 but you also wanted to be out in the street in  
21 light of the new policy and instructions to just  
22 help your patrol officers and to be there to  
23 assure them and help them?  
24 A. That's correct.

1 Q. Okay. Now, during the 21st, do you  
2 recall yourself seeing any use of chemical weapons  
3 that violated the new guidelines and instructions?  
4 A. No.  
5 Q. If you had, you would have reported it?  
6 A. Absolutely.  
7 Q. Same question regarding the use of  
8 other non-lethal weapons such as the knee  
9 knockers?  
10 A. I don't remember knee knockers being  
11 used on the 21st.  
12 Q. Okay. Fair enough.  
13 By the way, I forgot to ask you before,  
14 if you saw an officer using or shooting a knee  
15 knocker where it was directed not toward the  
16 ground, but to the body of the person, their torso  
17 or head, is that something you would report?  
18 A. Absolutely.  
19 Q. Do you recall during the course of the  
20 day on the 21st that there were many peaceful  
21 protestors that you interacted with personally?  
22 A. I did, yes.  
23 Q. And as I understand it, you walked  
24 around and talked to many protestors?

1 A. That is correct.  
2 Q. You didn't just sit in a car, you  
3 actually tried to make yourself available not only  
4 to officers, but to protestors?  
5 A. It was important for me that I get the  
6 right message with the right tone out. I knew  
7 that the decisions I was making would be viewed  
8 upon and I probably would be sitting in a virtual  
9 room like I am now talking about it, because of  
10 all the -- the political dialogue that had gone  
11 back and forth since -- you know, from June 1st  
12 till then, the different back and forth with the  
13 way the policy modifications were handled.  
14 It's just -- it was a very tense  
15 environment. There was a lot going on nationally,  
16 not just here, but everything was connected and  
17 everything -- like I said, it was very important  
18 for me to control the message and I wanted to  
19 control the tone. I wanted to make sure that I  
20 was explaining every action we took to the  
21 protestors, so I tried to talk to as many as  
22 possible.  
23 And so, yeah, I was out there --  
24 initially I was out there maybe with one other

1 sergeant and it was the two of us talking to  
2 everybody. And then obviously as the crowd grew,  
3 you know, there were more protestors and more  
4 officers, so, you know, I couldn't be the only  
5 officer that was talking, but, you know, I tried  
6 to control the message as much as I could.  
7 Q. So, Commander, do you recall a number  
8 of individuals who -- some of whom identified  
9 themselves to you during your interactions as  
10 protestors or leaders of the effort and others who  
11 just talked to you about being concerned about the  
12 increasing police presence during the time you  
13 were out there?  
14 A. Yes.  
15 Q. Okay. And do you recall them saying to  
16 you that they were very concerned, because they  
17 thought the increasing police presence would cause  
18 problems?  
19 A. I do recall that, yes.  
20 Q. Okay. And didn't they also talk to you  
21 about -- wasn't -- wasn't that the 21st, the day  
22 of the gay pride parade?  
23 A. It wasn't titled that, because  
24 technically the -- the parade had been canceled,

1 but there was a protest scheduled for the 19th.  
2 And our information was that that was going to be  
3 the de facto parade.

4 So basically the protest happened at  
5 the Statehouse, and there was a planned march  
6 north on High Street to the Stonewall building in  
7 the Short North, and then there was going to be a  
8 little bit of a block party around the Stonewall  
9 building in the Short North.

10 So the plan for us was we would handle  
11 the protests like we would anything else, you  
12 know, peaceful protests, everybody's allowed --  
13 they were on the Statehouse lawn. We had a very  
14 low footprint because of that. Our bike crews  
15 helped block traffic east and west on High Street  
16 as the march proceeded north into the Short North.  
17 Again, they tried to keep a very low profile.

18 After the march got to Stonewall and  
19 the block party started, at that point, that's  
20 when we moved over to the Statehouse so that we  
21 didn't interfere with any of the protest  
22 activities.

23 Q. Okay. But you recall people asking  
24 questions about the difference?

1 Q. Did you -- and do you recall saying you  
2 would follow up with them?

3 A. I don't.

4 Q. Okay. Did you investigate it? Did you  
5 do anything about it?

6 A. Well, again, that was all part of the  
7 stuff we shipped off to Baker Hostetler, so I  
8 think, you know, it got -- the use of force  
9 reports got forwarded to them from that incident.

10 Q. Okay.

11 A. There were a couple different things  
12 that have come back my way that, you know, stemmed  
13 from June 21st.

14 Q. Well, I mean, did you write up your own  
15 report and submit the name of the person who  
16 complained?

17 A. I did not.

18 Q. Okay. Did you -- did you -- I may have  
19 already asked, but -- and if I did, I apologize --  
20 but did you observe -- after those individuals  
21 spoke to you, did you observe any incidents of  
22 misuse of a chemical weapons?

23 A. I did not.

24 Q. Do you recall telling one of the

1 A. Difference in terms of what?

2 Q. In terms of the attention paid to one  
3 versus the other?

4 A. I don't -- I don't follow.

5 Q. Okay. That's all right. Let me -- let  
6 me keep pushing on here.

7 During your interactions that day, I  
8 mean, you were walking around, right? You weren't  
9 stationary?

10 A. That's correct.

11 Q. Okay. Didn't some individuals who were  
12 demonstrators come up to you and report what they  
13 said was violations that -- in at least one case  
14 they personally had been sprayed with mace, in  
15 another case reporting that officers had sprayed  
16 groups of people. Do you recall them telling you  
17 that?

18 A. There were a couple instances where  
19 people reported that.

20 Q. And do you recall telling them that you  
21 would get it -- you would investigate it and you  
22 asked for their names?

23 A. I do recall -- I do recall one incident  
24 where I asked for a name.

1 individuals who spoke to you that -- that there  
2 was a ban on tear gas, but mace was still allowed  
3 to be used by officers?

4 A. I don't recall that specific  
5 conversation.

6 Q. Is that something you were telling  
7 officers or individuals that day?

8 A. Yes. I mean, there is -- I mean, that  
9 is correct. There was, quote/unquote, a ban on us  
10 using CS. We are still allowed to carry mace and  
11 use mace if appropriate and use within the policy  
12 that was set forth on, you know, the -- that week  
13 or, you know, before, whether it was the 16th or  
14 the 18th or whatnot.

15 Q. Weren't the individual -- the  
16 individuals complaining to you about, among other  
17 things, mace being used to force people to get off  
18 the street?

19 A. I don't recall the specific nature of  
20 what they were saying, no.

21 Q. Okay. But you were -- you were  
22 alerting people that -- and I'm talking about  
23 members of the public that mace was still  
24 something that could be used?

1 A. Mace is still something we can use.  
 2 Q. Okay. Now, you mentioned earlier that  
 3 you made reference to the fact that this was part  
 4 of -- these protests were part of a national  
 5 effort. Do you recall that? Did I understand you  
 6 correctly?  
 7 A. Well, I didn't -- I did say this was  
 8 going on nationally, and that is correct. There  
 9 were obviously multiple cities throughout the  
 10 nation that were all seeing very similar, similar  
 11 things. And not just the message, but also the  
 12 tactics being used by different protestors. And,  
 13 you know, to the point where we knew that the  
 14 protestors were trying to turn Broad and High or  
 15 High Street into a -- their own chop zone in  
 16 between State and Broad.  
 17 And I think you'll see that, you know,  
 18 if you watch -- I remember having numerous  
 19 conversations with people on the 21st where they  
 20 were saying, this is our street, you know, you  
 21 guys can't come here. You know, we've been --  
 22 we've controlled this street for, you know, the  
 23 past month or the past week, you know, I don't  
 24 recall the exact time frame, but there was

1 numerous people that mentioned that.  
 2 So there was a concerted effort to turn  
 3 that into its own autonomous area, so to speak.  
 4 So, yeah, I mean, I think there were -- there were  
 5 things that we saw happening in different cities  
 6 that were also happening here. And, you know, to  
 7 a lesser extent we're still seeing that. I mean,  
 8 I think that, you know, what we see -- it's a  
 9 smaller world today than it was years ago. You  
 10 know, we see similar messaging and similar tactics  
 11 from all kinds of protest groups, not just whether  
 12 they're left or right ideologically. I think, you  
 13 know, there's -- you know, the Internet's made the  
 14 world small. You know, what happens in Seattle or  
 15 D.C. happens in Columbus as well.  
 16 Q. Okay. Well, let's -- I would like to  
 17 focus your attention on some aspects of some of  
 18 the things we've heard in this case. You -- you  
 19 knew a lot -- well, I don't want to say, "a lot,"  
 20 you knew individuals who were spokespeople or  
 21 active in Columbus -- local Columbus groups who  
 22 helped publicize the demonstrations and encouraged  
 23 people to come down and express their views to  
 24 protest, right?

1 A. I knew -- I know more today than I knew  
 2 back on June 21st, but, yeah, I mean, I was  
 3 starting to become more familiar with -- with who  
 4 was more involved in a leadership role. I think  
 5 June 21st it would be a little bit early for me to  
 6 say that I was -- I had kind of a grasp of the  
 7 who's who. I think that I'm in a much better  
 8 place now in terms of having the context and the  
 9 resources to know all that. But I was starting to  
 10 recognize faces and names back then, but it was  
 11 still very early.  
 12 Q. But even by the 21st, you knew at least  
 13 some individuals who were involved in encouraging  
 14 people to protest, right?  
 15 A. I had met some, yes.  
 16 Q. Did you have any reason to believe they  
 17 were -- their goal was to cause violence, loot, or  
 18 do anything other than express their views that --  
 19 about racism, their belief in racism in the police  
 20 department and excessive force against people of  
 21 color?  
 22 A. There are some people that were --  
 23 would be part of that crowd that, yes. I did know  
 24 of information related to violence, the majority

1 of them that is not -- the majority of them would  
 2 be peaceful protestors who believed in the cause  
 3 and wanted to peacefully protest and speak up for  
 4 their rights. But there was some individuals that  
 5 I did know that, you know, had more criminal  
 6 intentions.  
 7 Q. Okay. So -- so the department had  
 8 information about specific individuals, at least  
 9 some -- sounds like you're telling me sometime  
 10 very early in these demonstrations?  
 11 A. Yes. I don't know whether that was --  
 12 you know, what time -- the time frame was on when  
 13 we got certain information. I think that we knew  
 14 very early on by that first weekend or the end of  
 15 the first weekend that there were people that  
 16 were -- that had more criminal intentions than  
 17 just -- you know, that weren't members of BLM, but  
 18 that were looking to take advantage of the  
 19 situation to cause chaos.  
 20 Q. What effort did the department take to  
 21 try to isolate those individuals or -- or if there  
 22 was evidence of some kind of a conspiracy to  
 23 protect the peaceful protestors from them?  
 24 A. Well, I think that -- twofold. One, we

1 formed a quasi task force of some detectives to  
 2 investigate, you know, one, the looting, but, two,  
 3 the -- you know, more of the criminal actions and  
 4 nature through our, you know, criminal  
 5 intelligence unit. So we formed that to kind of  
 6 look into all -- to try to isolate the criminals  
 7 and focus on their criminal behaviors as opposed  
 8 to, you know -- you know, their ancillary role  
 9 with the, you know, the protestors.

10 And then, two, once the daily protests  
 11 finally, you know, kind of stopped and we had a  
 12 chance to, you know, collect ourselves, that's  
 13 when we formed the police emergency response team  
 14 and we went through the training and we kind of  
 15 devised new tactics on how to -- to handle the  
 16 protests in a way that we could isolate and target  
 17 criminal violators without interfering with the  
 18 actual protestors.

19 So it was really a seed change in terms  
 20 of the old way of lining up on a skirmish line in  
 21 the street and, you know, clearing the street, so  
 22 to speak. We really had to kind of change -- do a  
 23 180 in terms of how we prepared and worked with --  
 24 and approached the protests. But that -- like I

1 said, we didn't get a chance to do that until I  
 2 think we started brainstorming for it in August  
 3 and September and started training in October.

4 Q. Had there been previously such a plan?  
 5 I think it was called something like ACT, the  
 6 arrest something team?

7 A. So in the early 2000s, ACT was a part  
 8 of our, I guess it would be a civil disorder  
 9 response. It was more geared towards campus,  
 10 because that's historically where we've had the  
 11 majority of our civil disorder. And they did, you  
 12 know, respond to campus situations or planned  
 13 block parties where it often turns, you know,  
 14 chaotic. And they had --

15 Q. Commander, I'm going to apologize for  
 16 interrupting again, but because of the time  
 17 concerns, you don't have to go through all the  
 18 details. I just -- I just wanted to confirm that  
 19 there was a crowd control unit at one time?

20 A. Right.

21 Q. And, you know, obviously it sounds like  
 22 it's being -- it was discussed sometime later in  
 23 2020 again. I just want to -- but that old unit  
 24 was -- it was designed to do what you sort of

1 described a minute ago, right? To isolate  
 2 dangerous individuals so that peaceful protestors  
 3 aren't subjected to dispersal weapons?

4 A. Right. There are definitely elements  
 5 of ACT that we incorporated into the PERT.

6 Q. Okay. Hang on one second.  
 7 So going back to the 21st, did you --  
 8 did you observe or interact with some of the  
 9 street medics that were at the events? It doesn't  
 10 have to be the 21st. You were aware that there  
 11 were individuals who were street medics who had  
 12 training, some of whom were nurses, but others who  
 13 were not, had basic CPR and other kinds of  
 14 training to help people who might be affected or  
 15 injured in a protest?

16 A. I am not aware of any training that any  
 17 of the street medics got, because they never would  
 18 identify themselves or talk to us about that.  
 19 There were numerous interactions I had with people  
 20 that claimed to be street medics during that  
 21 initial weekend and during the subsequent weeks.  
 22 I know that I did talk to a couple of the medics,  
 23 the street medics on the 21st when I first got  
 24 to -- like in front of the McKinley statue,

1 because they had bottles of water they were  
 2 passing out and things like that.

3 But no, no street medic ever told me  
 4 about any training that they ever had. And to the  
 5 contrary, there were several times during the  
 6 first weekend specifically where street medics  
 7 interfered with a lot of, you know, one us getting  
 8 real medics to the scene, caring for somebody that  
 9 had a rock thrown through their car window and was  
 10 bleeding. And the street medics basically said,  
 11 we'll pay you. They hushed them up and jumped in  
 12 the car with them and then they left leaving our  
 13 CFD medic right there waiting to care for the  
 14 person.

15 So, yeah, we actually had talked to the  
 16 city, the mayor's office about the problem with  
 17 the street medics and why, you know, we were so  
 18 upset with them in terms of, you know, we -- if  
 19 they would have given some kind of I.D. or said,  
 20 you know, hey, I'm a nurse at, you know, Grant and  
 21 I do this on my own time because I believe in the  
 22 cause, I think our response would have been much  
 23 different. But that's not the case, that was not  
 24 how any of them presented themselves to us.



1 Q. Well, the specific incident you just  
2 referenced where someone you referred to as a  
3 street medic got in a car and drove away and  
4 interfered with a paramedic taking care of  
5 someone, when was that?  
6 A. Friday night the 29th of May, around  
7 Russell and High.  
8 Q. And do you remember the time?  
9 A. Late night. We -- yeah, it was --  
10 Q. During the wee hours of the morning or  
11 more like 11:00 to 12:00?  
12 A. I -- I'm not sure, sir.  
13 Q. Okay. Were you ever --  
14 A. I just --  
15 Q. I'm sorry.  
16 A. If we have the radio traffic, I aired  
17 for a medic to -- because a protestor had thrown a  
18 rock through a car window and it had hit and cut  
19 the driver up. And we were about a block -- we  
20 were about a block away when it happened. And  
21 then as we came up on it, the street medics were  
22 there.  
23 Q. Okay. Did you see street medics  
24 tending to people at any time during the

1 about getting out of the street? I'm talking  
2 about downtown on the 21st.  
3 A. Yeah.  
4 Q. Am I correct?  
5 A. Yeah. We tried that a couple times,  
6 you know, especially when people were talking  
7 about, you know, I don't like seeing this many  
8 officers here. And I would say, if you get on the  
9 sidewalk, you know, our officers will go back to  
10 the car. Or we'll pull out of this intersection,  
11 if everybody stays on the sidewalk. We had that  
12 message as early as the 28th.  
13 You know, we had a -- one of the  
14 protest organizers, we invited him behind the  
15 lines, got on the PA and told the crowd, everybody  
16 can stay as long as they want as long as they stay  
17 on the sidewalk and stop throwing things at -- you  
18 know, rocks and stuff at the officers.  
19 We -- you know, that's been something  
20 that all of us have been trained on is to try to  
21 find a common ground with, you know, protest  
22 organizers from the get-go and, you know, try to,  
23 you know, with -- do some kind of a combination  
24 on, you know, a win/win kind of deal. So that's

1 demonstrations, washing their faces, taking care  
2 of cuts or other minor injuries?  
3 A. I saw people passing out waters. A lot  
4 of times they had an arm band on or a color of the  
5 day, which, you know, we kind of -- again, we  
6 didn't know that initially. But after we had been  
7 doing this for a couple of weeks, we realized that  
8 there was, you know, a color of the day for the  
9 protestors depending on their role, you know --  
10 you know, within the organization or -- I use the  
11 word, you know, organization loosely, but I think  
12 you understand what I mean.  
13 Q. Yep. What about legal observers, did  
14 you talk to or interact with any legal observers?  
15 A. There were times where I saw them, I  
16 don't know -- I can't remember if I specifically  
17 talked to one that identified themselves as a  
18 legal observer or not. It's possible, but like  
19 you said earlier, I talked to a lot of people, you  
20 know, on that day specifically, so I'm not  
21 positive if any of them identified themselves as  
22 such.  
23 Q. And as I recall, you also, for a period  
24 of time, kind of negotiated a deal with protestors

1 something we've always, you know, tried -- you  
2 know, strived for. And, you know, like I said, we  
3 did it on the 28th, we did it on the 29th, and we  
4 -- you know, I did it on the 21st.  
5 Q. Okay. And you were able to get  
6 their -- you know, not -- not for the whole time,  
7 but you were able to get significant blocks of  
8 time when they cooperated with you?  
9 A. Yes, sir.  
10 Q. Isn't it also true that you personally  
11 observed many peaceful protestors yelling at other  
12 people who would throw things and asking them to  
13 stop?  
14 A. Absolutely.  
15 Q. Don't do that?  
16 A. Yeah.  
17 Q. Didn't you also see that in many  
18 instances, the people who were throwing things did  
19 it from the back of a crowd of other protestors  
20 and like a bottle of water would land in front of  
21 the protestors, you know, peaceful protestors in  
22 front and -- and sometimes even hit the  
23 protestors?  
24 A. Yeah, we saw that. We saw smoke bombs.

1 We saw I think -- I want to say the first time I  
 2 saw it was the 30th where I saw a protestor behind  
 3 the lines throw a smoke bomb into the crowd, and  
 4 -- because they wanted the perception that it was  
 5 us throwing tear gas. Yeah, so, I mean, I --  
 6 there were all kinds of different, you know,  
 7 tactics being used by people that were trying to  
 8 cause chaos.

9 Q. And wouldn't you agree with me that --  
 10 well, I mean, I've heard it described by the mayor  
 11 and other police officials that clearly 90 plus  
 12 percent of the crowds for most of the days of  
 13 those demonstrations and during most of the hours  
 14 of those demonstrations were peaceful people?

15 A. I would say that's fair. I mean, I  
 16 think at different times it was higher than that,  
 17 and I think it was -- at different times it was a  
 18 little bit lower than that.

19 You know, I think that there was a high  
 20 percentage of people that legitimately wanted to  
 21 protest, you know -- you know, for their cause.  
 22 And I think that there were a couple times where  
 23 crowd contagion kind of played a role and maybe  
 24 decreased the amount, maybe got some people that,

1 you know, that normally wouldn't have thrown  
 2 something to throw something.

3 But for the most part, you're correct.  
 4 You know, the majority of the crowd was peaceful  
 5 and -- but there was a very highly motivated  
 6 percentage of the crowd that was not.

7 Q. Do you -- did you have anything to  
 8 do -- I'm sorry. Do you -- do you have  
 9 information or did you get information about  
 10 whether or not the vehicles that were coming in  
 11 for the demonstrations and were -- and being  
 12 parked by demonstrators were like overwhelmingly  
 13 all local licensed vehicles?

14 A. For the most part, yes. There were  
 15 times where we got information about people coming  
 16 into town, but for the most part, they were local.  
 17 There were people from other cities in Ohio, I  
 18 think. You know, we definitely had a percentage  
 19 of people from Cleveland and Dayton and Cincinnati  
 20 were, you know, in other parts that were coming in  
 21 for the protests. And I think part of that is,  
 22 you know, we're the state capitol and it just kind  
 23 of was the hub, a little bit of that.

24 Q. Did the department publish any kind of

1 a listing or a report about where -- you know,  
 2 about this -- about frankly how relatively few  
 3 cars or other types of vehicles were found to have  
 4 come from anywhere outside of Ohio and for the  
 5 most part outside of central Ohio?

6 A. I don't know if -- I think after that  
 7 first weekend when we had I think the majority of  
 8 arrests happened Saturday, Sunday, but I think  
 9 there was a time period at which point the media  
 10 did a public records request about exactly what  
 11 you're talking about. And I think the list of  
 12 names and ages and cities listed the -- not -- we  
 13 didn't give out street address, but I think cities  
 14 of residents were provided to the media, and I  
 15 think that got put out there. I forget which  
 16 media outlet, but that seems familiar.

17 Q. Do you know what it would -- what that  
 18 information would be called? Was it like a  
 19 specific report?

20 A. I do not.

21 Q. Okay.

22 A. My assumption is -- is just that it was  
 23 something that was compiled due to the public  
 24 records request. We don't normally put together a

1 list of like that of, you know, everybody arrested  
 2 for certain charges on a certain day and their  
 3 hometown.

4 Q. What -- what would you -- do you recall  
 5 being involved with a stop and arrest of a -- it  
 6 was actually a bus that was called Buttercup, do  
 7 you know what I'm talking about? And became a  
 8 national item?

9 A. Yeah, I don't think I was at work when  
 10 that happened. I heard about it obviously.  
 11 Everybody heard about it.

12 Q. Okay. And that was described publicly  
 13 as, you know, outside agitators or had serious  
 14 weapons and it turned out that they were jugglers  
 15 and clown people, and it was actually a bus they  
 16 lived in and the hatchet was there because they  
 17 had a wood stove they used to heat it, you know  
 18 these details. Did you learn these details?

19 A. I -- sir, I -- however you want to  
 20 represent it is fine.

21 Q. No, I'm just asking if you heard that.  
 22 Did you learn that from your officers?

23 A. Well, the -- there's a stark difference  
 24 in how the officers are describing what was found

1 on that bus and how certain other people are  
 2 describing it. I've heard the -- this is  
 3 traveling musicians way of framing the story. I  
 4 guess I'll leave it at that.  
 5 Q. Was it your patrol officers who stopped  
 6 the bus?  
 7 A. I have no -- I have no idea.  
 8 Q. Okay. So I -- so, you know, whenever  
 9 it happened, you don't recall you being informed  
 10 of it and you haven't seen the actual footage of  
 11 the stop and where it was and why it happened?  
 12 A. No, sir.  
 13 Q. Okay. Fair enough.  
 14 Do you -- are you aware of any police  
 15 officer of any rank, other than Lieutenant  
 16 McFadden, during your years -- do you know who  
 17 Lieutenant McFadden is?  
 18 A. Yes.  
 19 Q. Okay. Other than Lieutenant McFadden,  
 20 are you aware of any black officer that has ever  
 21 been discharged -- I'm sorry, charged,  
 22 departmentally charged for discriminating against  
 23 black officers? I'm sorry, yeah, discriminating  
 24 against any officer because of race? I said that

1 wrong. So let me say it again to make it clear.  
 2 Do you know of any other officer who  
 3 was departmentally charged for discrimination,  
 4 other than Lieutenant McFadden?  
 5 A. I thought Eric Moore was, but I --  
 6 Q. And I can represent to you, because  
 7 we're -- we were involved with the case, he was  
 8 not departmentally charged for that.  
 9 A. Okay. Then no.  
 10 Q. Do you know of any officer who has  
 11 reported discrimination of another officer since  
 12 you've been working at the Columbus Police  
 13 Department?  
 14 A. Yeah, I think we've had EEO complaints  
 15 before of -- that have been investigated through  
 16 internal affairs.  
 17 Q. Oh, you have? Do you remember any  
 18 specific officer who reported discrimination?  
 19 A. I mean, I think that would be something  
 20 that would be more appropriate through the EEO  
 21 office. I don't know if that's something that I  
 22 disclose. Yeah, I mean, that's something --  
 23 Q. That's okay. I'm just asking you if  
 24 you remembered. I asked you earlier if you knew

1 of any officer who had been departmentally  
 2 charged. I'm just trying to find out if you  
 3 actually know of a specific officer who's ever  
 4 reported that they -- that another officer, not  
 5 them, not the person making the report,  
 6 discriminated against another officer?  
 7 A. Oh, like a third party?  
 8 Q. Yes. Right.  
 9 A. Okay. I'm sorry. Offhand, no, I  
 10 don't.  
 11 Q. Okay. I'm sorry if I didn't make that  
 12 clear.  
 13 Do you believe that racism exists  
 14 within the police department?  
 15 A. Sure. Racism exists within the United  
 16 States of America, within the world, and it's  
 17 certainly going to -- you represent it in every  
 18 organization or agency or whatever.  
 19 Q. Did you read the Matrix report?  
 20 A. I did.  
 21 Q. Okay. What was your reaction to the  
 22 percentage -- you know, that part of the report  
 23 was a survey of -- a confidential survey of  
 24 officers and staff, and according to the report,

1 almost one out of four officers indicated they had  
 2 observed -- they had observed discrimination, but  
 3 didn't report it?  
 4 A. Yeah, I read the report. And I found  
 5 the survey findings as sad and obviously as a call  
 6 to action that we have work to do.  
 7 MR. GITTES: Give me a pause here. I  
 8 think I can -- I'm trying to find -- to wind this  
 9 up. Actually, can we take another short break? I  
 10 think I might be able to be finished within a  
 11 couple questions.  
 12 MS. TANOURY: Yep, that will be fine.  
 13 I'm guessing I should probably let Officer Johnson  
 14 know he's going to be briefly delayed.  
 15 MR. GITTES: Yeah, it should be  
 16 briefly, though, and John's on the line so he can  
 17 jump right into that.  
 18 MR. GITTES: Thanks, Commander, I'll be  
 19 right back.  
 20 (A recess is taken.)  
 21 Q. Okay. I just really have very few  
 22 questions.  
 23 After the 21st, were you contacted by  
 24 anybody in the division or the mayor's office,

1 city council about complaints they had gotten  
 2 about the use of non-lethal devices, of weapons,  
 3 on the 21st or --  
 4 A. So, yes, sir. So Monday morning, the  
 5 20th or the 22nd, sorry, I was summoned to city  
 6 hall. And so I went over with Deputy Chief Woods,  
 7 and I was in a meeting with Mayor Ginther and  
 8 Council President Hardin and then a couple members  
 9 of Mayor Ginther's staff.  
 10 Q. And what happened?  
 11 A. So they -- they asked about what  
 12 happened, basically long story short, and I  
 13 explained all my reasons. Same reasoning I  
 14 provided to every person I talked to out on the  
 15 street, you know, for, you know, why we did what  
 16 we did. I talked to them about the lead-up in  
 17 terms of the escalation of basically disturbances  
 18 and what became violent behavior that was  
 19 happening on High Street between Broad and State  
 20 on a nightly basis, including shots fired,  
 21 bonfires in the middle of the street, cars being  
 22 surrounded, COTA buses being forced to turn  
 23 around. So I went into all that.  
 24 And then I talked about the rules of

1 discussed making a deal about if they stay off,  
 2 you could reduce the officers. And you told them  
 3 that one of the main reasons that weeded people  
 4 off the streets was because of traffic. Do you  
 5 recall that?  
 6 (Mr. Steinberg and Mr. Schlein joined  
 7 the deposition.)  
 8 A. I don't recall specifically saying just  
 9 traffic. I think I tried to stay on message  
 10 throughout the day that -- I mean, that obviously  
 11 is a consideration, right? I mean --  
 12 Q. Yeah, I just want to ask about that  
 13 aspect. I'm not saying it's the only thing you  
 14 said.  
 15 A. Yeah. I -- I can imagine that that  
 16 would be one of a handful of reasons that I  
 17 would -- I would talk about, yes.  
 18 Q. Is there some reason that you didn't  
 19 request that traffic be diverted on that Sunday?  
 20 A. So as a general rule, you know, we have  
 21 a decision to make every time that we're dealing  
 22 with these protests. The decision is, do we  
 23 divert traffic right away and block off the street  
 24 on the chance that they do take the street, or do

1 engagement that had been approved and signed, and  
 2 that included the trapping of unocc -- or  
 3 occupied -- uninvolving motor vehicles. And then I  
 4 talked about specifically with Council President  
 5 Hardin, because I knew obviously, you know, that  
 6 he had had a -- you know, he had been exposed to  
 7 mace on the 30th, you know, at the protests  
 8 downtown.  
 9 I talked about, you know, our -- what  
 10 our reasonable response would be. And so we  
 11 talked about, you know, the use of a chemical  
 12 irritant as opposed to going hands on or using a  
 13 baton or using other methods of force and how we  
 14 felt that the chemical irritant was the most  
 15 reasonable and did less harm. And so we discussed  
 16 that and -- and then that was about it.  
 17 Q. That brought to mind one other question  
 18 I had. Do you recall that on the 21st, may have  
 19 happened other times, but I'm just asking about  
 20 the 21st, people were asking you -- when I say,  
 21 "people," protestors who you talked to were asking  
 22 you about why -- why the spraying was happening  
 23 and why there was an emphasis of getting people  
 24 off the street? You know, you were -- you

1 we try to keep traffic flowing? And the -- the  
 2 general rule -- you know, the general train of  
 3 thought is is that traffic flow helps because it  
 4 tends to keep people on the sidewalk or on that  
 5 private property, you know, for instance, in this  
 6 case on the Statehouse lawn.  
 7 And so we try to keep traffic flowing  
 8 as long as possible. So that is the reason why  
 9 initially I didn't block off traffic right away.  
 10 Obviously once the street became closed, once  
 11 Broad and High got taken and, you know, I got  
 12 surrounded and some of my other officers did, too,  
 13 at that point, the cat's out of the bag, traffic's  
 14 not flowing anyway. So at that point we call, you  
 15 know, hey, have cruisers divert traffic here, tell  
 16 COTA that High Street is not passable right now.  
 17 But as a general rule, it's better to have traffic  
 18 flow than not.  
 19 Q. How long does it -- once you make the  
 20 decision that, hey, look what's -- what has  
 21 happened here has made, you know -- I mean,  
 22 sometimes fixing the problem with people in the  
 23 street effectively means you have police  
 24 interfering with traffic because you have a lot of

1 your officers in the street. So how long does it  
 2 take you once you do decide that, hey, we need to  
 3 divert traffic? How long does it take you to do  
 4 it? I'm talking about the downtown, I'm not  
 5 talking about anything else.  
 6 A. Minutes. You know, I think now it's  
 7 gotten a lot quicker, because we've -- in addition  
 8 to setting up PERT, we've also devised basically a  
 9 traffic control for marches and downtown. We have  
 10 that -- a traffic plan downtown now where we could  
 11 have units that are basically staged at their  
 12 intersections.  
 13 And as soon as we say, all right, let's  
 14 implement the traffic plan, we're -- we're  
 15 blocking off the street within seconds. But at  
 16 that time, we still hadn't really fully developed  
 17 that. It probably took minutes.  
 18 Q. Okay. Let me quickly do the last  
 19 couple of questions. You mentioned that there was  
 20 a -- I don't remember if you said when, but there  
 21 was an occasion when somebody, a protestor who  
 22 clearly wasn't there just to protest, threw a  
 23 smoke bomb or was it a tear gas grenade into a  
 24 crowd of protestors?

1 A. I don't think it was tear gas. I think  
 2 it was a smoke bomb. Because we subsequently have  
 3 arrested people that had smoke bombs in their  
 4 backpacks. And it tends to -- you know, the  
 5 anarchists, you know, kind of I think looking for  
 6 chaos. I don't think that they were members of  
 7 BLM or, you know, any of the related protest  
 8 organizations. I think it was people that were  
 9 there to cause chaos.  
 10 But so, yeah, we have subsequently  
 11 found smoke bombs on individuals before, but, yes,  
 12 there was one incident where I thought I saw a  
 13 person throw -- and it went off like a smoke bomb,  
 14 and it obviously was not tear gas, so it caused  
 15 people to run. And I did see that on the 30th.  
 16 Q. What day was it, the 30th? Did you  
 17 just say the 30th?  
 18 A. Yes.  
 19 Q. Okay. That -- I just kind of wanted to  
 20 ask you what day it was where -- were any of your  
 21 officers able to catch that person?  
 22 A. No.  
 23 Q. Okay. You wouldn't happen to know  
 24 whether it's -- where it happened?

1 A. I think it was when we were on Broad.  
 2 If I remember correctly, we were on Broad east of  
 3 High Street, and it was further towards Third  
 4 Street, so we were a good distance away from where  
 5 it looked like it happened. But that's the  
 6 general area where I -- you know, I'm pretty  
 7 sure -- that's what I saw.  
 8 Q. Okay.  
 9 A. And, well, I know I saw somebody throw  
 10 something and smoke go off and, you know, it  
 11 wasn't -- you know, when we got up there, there  
 12 was no tear gas that had been deployed right there  
 13 at that time.  
 14 Q. And what time -- what time was it,  
 15 morning, afternoon?  
 16 A. Late afternoon. I think if I remember  
 17 right, I came in mid to late afternoon on  
 18 Saturday, and by the time I got my initial -- I  
 19 initially went up to 670 and Goodale, and by the  
 20 time I got back to Broad and High, late afternoon,  
 21 early evening, it was still light out.  
 22 Q. Does the CPD use or have smoke  
 23 grenades?  
 24 A. We do.

1 Q. Okay. Were any of those being used  
 2 during the protests?  
 3 A. I did not authorize the use of any  
 4 smoke grenades. And I don't know of any that had  
 5 been used. It's -- the thing about the smoke  
 6 grenades, it's -- it's like calling -- it's like  
 7 bluffing somebody, so you really can only use them  
 8 once kind of thing. There are times where it's  
 9 been trained I think with -- you know, with the  
 10 use of, you know, especially when you have the  
 11 horses in play, too, but we did not have the  
 12 horses in play on that day, and -- at least where  
 13 I was at. So, no, I did not use or authorize the  
 14 use of any smoke grenades at that time.  
 15 Q. Do you -- do personnel have them -- did  
 16 they have them during the demonstrations, even if  
 17 it was a specialty unit, you know, like horses,  
 18 bicycle officers, SWAT?  
 19 A. SWAT probably would have, our  
 20 grenadiers probably would have and -- but the  
 21 grenadiers would have only, you know, used them  
 22 upon direction by a lieutenant or a commander.  
 23 Q. Okay. Although like with all -- I  
 24 should -- I'm asking, like with all non-lethal

1 crowd control weapons or devices, do the officers  
2 have some individual discretion if they feel they  
3 need to use it and don't want to necessarily use  
4 tear gas?  
5 A. Typically that is not treated the same  
6 as somebody pulling out their belt mace or Mark 9.  
7 If they're shooting a grenade from a canister,  
8 that's supposed to be at the direction of a  
9 lieutenant or higher. I suppose that there are  
10 scenarios where we would hypothesize and say if  
11 this happened, would it be okay if an officer did  
12 this? We probably could come up with some  
13 scenarios, you know, where it would be. But as a  
14 general rule for policy, that stuff is directed by  
15 a lieutenant or higher.  
16 Q. With one other question, and I think  
17 this will be the last one I have. When did you  
18 first become aware that the -- the mayor and city  
19 council were not -- they wanted changes in the  
20 crowd control tactics?  
21 A. I think we started hearing that, you  
22 know, shortly after the morning of the 30th when,  
23 you know, there was the incident downtown with  
24 Representative Beatty and City Council President

1 Hardin and Commissioner Boyce. I think that, you  
2 know, that was the first time specifically where  
3 we started hearing rumors that there was going to  
4 be, you know -- you know, some back and forth on  
5 that or some new direction.  
6 Q. Do you professionally and personally  
7 agree with the instructions that came from the  
8 administration?  
9 A. I would say professionally I think it's  
10 a tool that works in very limited circumstances.  
11 I'm not a fan personally of using it, but I've  
12 seen through my experience that there are  
13 circumstances where there is a need to clear a  
14 large amount of people in a small amount of time,  
15 and it is an effective tool, so...  
16 Q. So you -- I'm sorry. Don't mean to cut  
17 you off.  
18 A. But, you know, like I said, so -- but  
19 the direction from city hall and from the chief is  
20 that we won't use it, so we're not using it.  
21 Q. And that was what you instructed your  
22 officers, and you were there personally to try to  
23 make sure that new policy was followed?  
24 A. Yes. In terms of going back to the

1 21st?  
2 Q. Yeah, the 21st, you know, the days  
3 after the policy change occurred.  
4 A. Yes. Like I said, I felt that with  
5 everything that had transpired in those -- like I  
6 said, those first three weeks of June and the back  
7 and forth and the uncertainty, that on the 21st  
8 specifically it was very important that I be out  
9 for both the public and for my officers to control  
10 the message to ensure that the right tone was  
11 being taken, yes, so that's correct.  
12 MR. GITTES: Unless you have anything  
13 you feel you want to correct or add, those are all  
14 the questions I have.  
15 THE WITNESS: Okay. Thank you, sir.  
16 MR. GITTES: Hang on, I'm getting  
17 buzzed, maybe they're -- okay. Never mind.  
18 I would request that -- we're going to  
19 order this and I would request, Commander, that  
20 you read it and sign.  
21 THE WITNESS: Yes, sir.  
22 MR. GITTES: All righty. Thanks for  
23 your patience.  
24 MS. TANOURY: We'll have a copy.

1 (Signature not waived.)  
2 -----  
3 Thereupon, the foregoing proceedings  
4 concluded at 12:44 p.m.  
5 -----

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IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio, on February 23, 2021.

Mary Bradley, Notary Public - State of Ohio  
My commission expires September 19, 2024.

[illegible]

Date \_\_\_\_\_ Signature \_\_\_\_\_

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**Exhibits**

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**From:** Quinlan, Thomas <TQuinlan@columbuspolice.org>  
**Sent:** Thursday, December 17, 2020 2:42 PM  
**To:** Tanoury, Alana V.; Phillips, Westley M.  
**Subject:** FW: Chief's Time Sensitive Updates June 16th - Use of Chemical Agents

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**From:** Announcements, Division-Wide  
**Sent:** Tuesday, June 16, 2020 9:56 PM  
**To:** Columbus Division of Police <ColumbusPolice@columbuspolice.org>  
**Subject:** Chief's Time Sensitive Updates June 16th - Use of Chemical Agents

There are two important updates that need communicated without delay.

One is regarding a policy change on the use of chemical agents and the second is on accepting gratuities.

**FIRST ISSUE:**

Until directed otherwise officers will follow the revised policy on use of chemical spray as outlined below which was prepared by the City Attorney's Office. Once the Chief's Advisory Panel begins its work in early July we will make more permanent policy changes, send the policy through the concurrence process, reconcile the Emergency Operations Manual with the policy revision, and allow the Union time to review the policy. This policy is a stop gap measure until a complete policy can be finalized and published in directives and posted to PowerDMS.

***Chemical Spray – 2.04 II. A.: Chemical Agents***

1. Sworn personnel shall carry only those chemical agents that have been authorized by the Chief of Police. Tear gas, formally known as lachrymator, shall not be used.

5. Sworn personnel shall not use their Division-issued chemical spray to disperse a congregation of individuals unless the congregation is engaging in aggressive or violent actions towards officers or others. Prior to deployment of the chemical spray on or against an aggressive or violent crowd, at least three notifications should be made when possible to the participants in the crowd advising them that they are committing a violation of law and are to disperse, and that chemical spray will be used if they fail to comply with the order. Failure to leave a street, or to move, by itself, shall not justify the use of chemical spray against a non-aggressive non-violent crowd.

a. The notifications should be made in a manner which the participants in the crowd should reasonably be able to hear and understand.

b. The notifications and subsequent deployment of chemical spray in crowd control situations should be audio/video-recorded when possible.

.....

This language authored by the City Attorney's Office is only a minor modification from the existing language and applies to crowds. But in short it means officers may not use chemical sprays on nonviolent non aggressive crowds during protests, period. Belt mace may be used to directly impact an individual you are attempting to arrest in a crowd situation who is more than a passive resister. Without the ability to use chemical sprays to disperse crowds, supervisors will need to take a leadership role in addressing crowd situations and officers will follow the directions of the incident commander at the scene or an event or directing actions over a police radio. Officers may find it necessary to either form an arrest team and safely

target active core members who are using aggressive actions while co-mingling with peaceful protesters or might need to vacate the area so protesters are not able to assault police officers. I do not expect officers to be assaulted and have no recourse to protect yourself. A supervisor will need to decide whether the reasonable response is to make arrests or to remain at a safe distance to avoid assault. Officers should not allow members of the public to be assaulted. If people are being hurt form a rescue team and protect the public within the limits of this policy, and guided by training, leadership, and direction.

## **SECOND ISSUE:**

Jeff Furbee wants all officers reminded of the policy on accepting gratuities and the Ohio Ethics Commission opinions and the City Ethics Office opinions.

The media has been working on a story as a follow up to businesses who are stating they support the police and plan to continue their "police discount" and others who have opted to change their policy. As a reminder, the occasional cup of coffee or discounted meal is not expressly prohibited by Ohio ethics law, but is still frowned upon. However, the "cumulative effect" of frequenting a business because they offer a police discount is expressly prohibited per the Ohio Ethics Law and our policy. The media is working on publishing a story about these discounts and officers who are identified or reported violating the policy are placing themselves in jeopardy. Safest course of action is to respectfully decline discounts and keep receipts for meals.

Due to the time sensitive nature of this email I am preparing this message while out of the office. More information will be shared as the policy and training on the policy are finalized. Until that time all personnel are expected to comply with the policy revisions directed to us from the City Attorney's Office.

THOMAS QUINLAN  
Chief of Police

